

1 REPORTER'S RECORD

2 VOLUME 42 OF 75 VOLUMES

3 TRIAL COURT CAUSE NO. F45059

4 COURT OF CRIMINAL APPEALS NO. AP-76,768

5 STATE OF TEXAS ) IN THE DISTRICT COURT

)

6 VS. ) JOHNSON COUNTY, TEXAS

)

7 MARK ANTHONY SOLIZ ) 413TH JUDICIAL DISTRICT

8

9

10 JURY TRIAL

11 GUILT/INNOCENCE PHASE

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17 On the 2nd day of March, 2012, the following

18 proceedings came on to be heard in the above-entitled and

19 numbered cause before the Honorable William C. Bosworth,

20 Jr., Judge presiding, held in Cleburne, Johnson County,

21 Texas:

22 Proceedings reported by Machine Shorthand and

23 Computer-Aided Transcription.

24 ORIGINAL

25

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## I N D E X

2

## VOLUME 42

3

## GUILT/INNOCENCE PHASE

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1 PROCEEDING  
 2 (Open court, Defendant present;  
 3 Jury not present.)  
 4 THE COURT: State ready to proceed?  
 5 MR. STRAHAN: Yes, sir.  
 6 THE COURT: Defense ready to proceed?  
 7 MR. WESTFALL: Yes, Your Honor.  
 8 THE COURT: Defendant is present.  
 9 THE DEFENDANT: Yes, sir.  
 10 MR. WESTFALL: We have a little issue just to  
 11 take up real fast.  
 12 THE COURT: Okay.  
 13 MR. WESTFALL: Yesterday, of course,  
 14 Detective Paine testified pretty extensively on Direct  
 15 Examination, the hearsay statements of Jose Ramos.  
 16 Therefore, under Rule 806, that gives us the ability to  
 17 cross-examine the declarant.  
 18 THE COURT: The what?  
 19 MR. WESTFALL: Cross-examine the declarant as  
 20 though Jose Ramos were sitting on the stand. And if Jose  
 21 Ramos were sitting on the stand, we would surely  
 22 cross-examine him on the plea agreement that he has worked  
 23 out with the State whereby he will plead guilty and get a  
 24 life sentence for all the acts that we've been hearing  
 25 about. This agreement, as the State knows and the Court

1 probably knows, was worked out prior to this trial  
 2 beginning.

3 THE COURT: I don't know of anything about  
 4 Ramos.

5 MR. WESTFALL: Oh, okay.

6 THE COURT: Other than I know that the  
 7 District Attorney has not filed a certification with the  
 8 Court saying he's seeking the death penalty. But I've  
 9 appointed Bill Mason to represent Ramos until such time as  
 10 that declaration is filed, and I've not seen that. And  
 11 that's all I know about Ramos.

12 MR. WESTFALL: Okay. Well, then, then I'll  
 13 correct myself, for the Court's information. Jose Ramos  
 14 and the State struck a -- an agreement before this trial  
 15 began for Jose Ramos to receive a life sentence on these  
 16 cases. They will waive the death penalty in return for a  
 17 plea of guilty and -- and his testimony. The State's  
 18 Motion in Limine, which we agreed to initially, is  
 19 directed at that, I presume, the Motion in Limine  
 20 regarding plea agreements.

21 I would argue, Your Honor, that in light  
 22 of Rule 806 and in light of the testimony from yesterday,  
 23 that the plea -- that the plea agreement is now  
 24 admissible, it is relevant, and I am pretty certain  
 25 the Detective knows about it. But we should be able

5  
 1 to cross-examine him on that as though, like I said,  
 2 under 806, as though Jose Ramos were sitting in that  
 3 chair.  
 4 MR. STRAHAN: The response we would have,  
 5 Judge, is the door to anything specifically Jose Ramos  
 6 may have said, that door was opened not only in the  
 7 Defense's opening statement, also in their own  
 8 cross-examination of this witness. And I think what  
 9 they're attempting to do is profit by a door that they  
 10 already opened. And I don't think they're allowed to do  
 11 that, open the door themselves and then try to get in this  
 12 particular plea agreement.

13 Everything that's been testified to at this  
 14 point has nothing to do with whether or not Jose Ramos  
 15 ever agrees to testify or not. Statements by him that  
 16 were made at the time as a basis of this investigation,  
 17 two completely separate entities. And so on that  
 18 rationale, we would object.

19 THE COURT: Well, as it stands, the Court has  
 20 not approved any plea bargain agreement with regard to  
 21 Ramos. Isn't Ramos in the 413th Court?

22 MR. STRAHAN: Yes, sir, he is.

23 THE COURT: And I don't recall approving any  
 24 plea bargain agreement or any visiting Judge approving any  
 25 plea bargain agreements. It may -- seems like this may

6  
 1 come up at some point, but I don't see why it's come up  
 2 yet. Can you elaborate or explain why it would be  
 3 necessary at this point?

4 MR. WESTFALL: Absolutely, Your Honor. First  
 5 of all, he testified on Direct Examination before we  
 6 cross-examined him as to statements made by Jose Ramos.  
 7 And then secondly, I mean, we received a notice from the  
 8 State that Jose Ramos and the State have reached an  
 9 agreement, and this agreement is for a life sentence.  
 10 They waive the death penalty. That certainly goes to his  
 11 credibility. I mean, under the rules of evidence, I think  
 12 it's pretty clear that would go to his bias and  
 13 credibility. And so, you know, if he were to have been in  
 14 here testifying himself, then we would be able to use this  
 15 to impeach his credibility, because he has a bias for the  
 16 State. He's trying to get his life sentence.

17 THE COURT: I understand that part. What I  
 18 was trying to get at, isn't this officer a stranger to any  
 19 plea bargain agreement between the State of Texas and  
 20 Mr. Ramos?

21 MR. WESTFALL: Except that he is the State of  
 22 Texas, Your Honor. He's an agent.

23 THE COURT: I don't understand why this  
 24 officer would be the one that would have knowledge and  
 25 understanding and authority with regard to a plea bargain

1 agreement that may or may not exist with Ramos.

2 MR. WESTFALL: Well, I don't think 806  
3 hinges on -- on the character of the person who delivers  
4 the testimony of the declarant. You know, if he doesn't  
5 have personal knowledge, I mean, I'm not sure that even  
6 matters either. We -- as soon as the hearsay statements  
7 are out there, we're allowed to impeach the declarant as  
8 though he were here, under Rule 806.

9 THE COURT: Response.

10 MR. STRAHAN: I would say to that, Judge,  
11 first of all, the statements that he made at that time,  
12 there was no offer of anything in exchange for his  
13 testimony. What he's talking about doing is impeaching a  
14 witness that is not here, has not testified, on statements  
15 that he would have made before he was ever offered  
16 anything in exchange to testify. So at the time he made  
17 the statements that are being spoken of, it's impossible  
18 for him to have had that type of bias for this particular  
19 agreement that was made.

20 And so at this point, I think that it would  
21 be not relevant until such time as he did testify. Then  
22 they could get in to impeaching him on that because he's  
23 testifying and his motives for doing so at that time.

24 That's our position.

25 THE COURT: When was the plea bargain

10 1 agreement offer extended?

2 MR. STRAHAN: In December of 2011.

3 THE COURT: Was there any offer of that prior  
4 to that?

5 MR. STRAHAN: No, sir.

6 THE COURT: So at the time that this  
7 Detective was involved, wasn't that prior to  
8 indictment?

9 MR. STRAHAN: Yes, sir. It was June 30th of  
10 2010.

11 THE COURT: The relevant time period, the way  
12 I'm approaching this would be at the time of the offer was  
13 extended or at least post-indictment but not  
14 pre-indictment when it was back in a point where nobody  
15 had been charged with a crime yet.

16 MR. WESTFALL: Your Honor, 806 says when  
17 hearsay statements have been admitted, the credibility of  
18 the declarant may be attacked, and if attacked, may be  
19 supported by any evidence which may be admissible for  
20 those purposes if the declarant had testified as a  
21 witness. And it's not -- it's not tied to time period  
22 except for when the hearsay statements come out, what  
23 could effect his credibility at that time. And I say as  
24 of yesterday, this plea deal was highly relevant and is  
25 highly relevant.

1 THE COURT: Was there any objection to any  
2 hearsay statements? Were they identified to the Court and  
3 what the hearsay statements were?

4 MR. WESTFALL: No. I mean, but he certainly  
5 testified to what Jose Ramos said. And that is, I mean,  
6 it's -- opening the door is something that you have to do  
7 at your own peril. You can't depend on the other side to  
8 object, and 806 doesn't require that.

9 THE COURT: Okay. I'm going to overrule the  
10 request at this time.

11 State ready to proceed?

12 MR. STRAHAN: Yes, sir.

13 MR. WESTFALL: You're going to deny our  
14 request? I'm sorry, because --

15 THE COURT: At this particular time with this  
16 particular witness, I'm going to deny your request without  
17 prejudice to reurging it when you think it's appropriate  
18 to reurge it.

19 MR. WESTFALL: Thank you, Your Honor.

20 MR. HEISKELL: Thank you, Judge.

21 THE COURT: Please bring in the Jury.

22 (Jury present.)

23 THE COURT: Thank you. You may be seated.  
24 You may continue.

25 MR. STRAHAN: Thank you.

12 DANNY PAINÉ,

2 Having been previously duly sworn, testified as follows:

3 FURTHER REDIRECT EXAMINATION (Continued)  
4 BY MR. STRAHAN:

5 Q. Detective Paine, you understand you're still  
6 under oath, correct?

7 A. Yes, I do.

8 Q. Okay. Yesterday there were some similarities and  
9 some differences noted between Jose Ramos and Mark Soliz,  
10 the Defendant in this case. Can you tell me, if you know  
11 from your investigation, Mr. Ramos's date of birth?

12 A. Yes. 7/22 of 1983.

13 Q. That's Mr. Ramos?

14 A. Yes.

15 Q. Okay. What is Mr. Soliz's date of birth?

16 A. 1/27 of '82.

17 Q. Okay. So just looking at that, what's on the  
18 board, which one of these individuals is actually the  
19 eldest?

20 A. Mr. Soliz.

21 Q. Okay. When we left off yesterday, the two  
22 written statements by Mr. Ramos had been admitted into  
23 evidence; is that correct?

24 A. Yes.

25 Q. I'm sorry -- Mr. Soliz. I would like to go

1 through them with you at this point. Do you have that on  
2 your screen?

3 A. Yes, I do.

4 Q. Okay. At the start, at the very top of State's  
5 Exhibit No. 2, there is a "State of Texas, County of  
6 Tarrant", and there's a starting time when this was  
7 beginning; is that correct?

8 A. Yes.

9 Q. And this is the one that was done during the  
10 first time y'all stepped out of the room; is that right?

11 A. I believe so, yes.

12 Q. Okay. And can you tell us what that first  
13 paragraph says, if you can see it?

14 A. Would you like me to read it entire or just  
15 describe what it is?

16 Q. You can read it.

17 A. Okay. "I, Mark Soliz, prior to making any  
18 statement, having been duly warned by Detective T.  
19 Boetcher, No. 1795, the person to whom this statement is  
20 made, understand that, one, I have the right to remain  
21 silent and not make any statement at all and that any  
22 statement I make -- that I make may be used against me at  
23 my trial; two, any statement I make may be used as  
24 evidence against me in court; three, I have the right to  
25 have a lawyer present to advise me prior to and during any

14 1 questioning; four, if I am unable to employ a lawyer, I  
2 have the right to have a lawyer appointed to advise me  
3 prior to and during any questioning; and five, I have the  
4 right to terminate the interview at any time. Having been  
5 informed of these rights --" I'm sorry. "Having been  
6 informed of these, my rights, and understanding same, I  
7 hereby freely, intelligently, voluntarily, and knowingly  
8 waive these rights, not desiring a lawyer, voluntarily  
9 choose to make the following statement."

10 Q. Okay. And those, whenever you-all at Fort Worth  
11 P.D. take a written statement from someone who is a  
12 suspect like we talked, do you always add those rights to  
13 the top of that statement or somewhere on the statement?

14 A. Yes.

15 Q. I think we heard yesterday off camera, but you  
16 could still hear that Detective Boetcher is telling him to  
17 read it and make any corrections he wants before he signs  
18 it; is that correct?

19 A. Yes.

20 Q. Okay. And so he would have had the opportunity  
21 to read that, those rights one more time before he read,  
22 before he signed the document; is that correct?

23 A. Yes.

24 Q. Okay. Now would you read that second paragraph  
25 that's in bold, please.

1 A. "My full name is Mark Anthony Soliz. I am 28  
2 years of age. My date of birth is 1/27/82. I live at,  
3 not available. My contact telephone number is  
4 817-806-8069. I have completed nine years of school. I  
5 can read, write and understand the English language."

6 Q. Again, all of that he would have had the  
7 opportunity to read and correct if he wanted to prior to  
8 signing this document; is that correct?

9 A. Yes.

10 Q. Can you see the very first statement after that,  
11 the very first couple sentences? Could you read that to  
12 us.

13 A. Actually on mine, if you could squeeze it a  
14 little bit, it's cutting off the left edge on mine. Right  
15 there. I'm sorry. Which part would you like me to read?

16 Q. Could you start with the body of the statement.

17 A. "I got out of prison in May of this year. I  
18 stayed with my cousin Yolanda off Berry by Riverside in  
19 those apartments. My cousin knew this guy named Joe and  
20 he had the same nickname as me, Kilo, and we became  
21 friends and started hanging out."

22 Q. Let me stop you right there. The first thing he  
23 says is he got out of prison in May, which is just a  
24 couple months before this; is that correct?

25 A. Yes.

1 Q. Okay. And while he does not list a home address,  
2 it says not available, he had a place to stay clearly?

3 A. Yes, his cousin Yolanda.

4 Q. In fact, if you know, if you don't, that's fine  
5 too, when someone paroles out of T.D.C., do they have to  
6 have a place specifically they parole out to?

7 A. Yes, sir.

8 Q. Somebody has to have a plan for a place to live  
9 whenever they get out, if that's the way parole works?

10 A. Yes, and for monitoring reasons.

11 Q. Okay. If you could, keep going a little bit,  
12 please.

13 A. "The first robbery that I tried to do was getting  
14 this car from this man. He was at a little grocery  
15 store. He was getting something to drink and he had a  
16 car, Dodge, slash --" I think it's supposed to be "Saturn,  
17 turquoise green. I had a gun, 9 millimeter pistol, and I  
18 walked up to him and told him to get out of the car and  
19 give me the keys. And he said all right, and he got out  
20 of the car and gave me the keys. And I asked for his  
21 wallet. Got no more than a couple bucks. And we left,  
22 and I have had that car ever since."

23 Q. Okay. Let's stop right there. And based on  
24 your -- what you've already testified to in our time line,  
25 which offense is he speaking of?

1 A. The 604 North Riverside, Sammy Abu-Lughod,  
 2 Abu-Lughod.

3 Q. Does he say in that statement that he used a gun  
 4 in that robbery?

5 A. Yes.

6 Q. Does he say he's with anyone or alone?

7 A. He does not indicate that he was with anyone.

8 Q. Okay.

9 A. In fact, he refers to "I".

10 Q. Okay. Okay. Could you start with the next one  
 11 then, please.

12 A. "The next time was on East Belknap. Man with a  
 13 Dodge pickup. Also me by myself. It was green in color.  
 14 He was at a store. He was Hispanic guy. He was walking  
 15 to his truck, and I walked up to him and I told the guy to  
 16 give me his keys and wallet. And I have the same gun with  
 17 me as before. And he gave me his keys and wallet. And I  
 18 took off in his truck, parked it about a block away from  
 19 Fuzzy's house on Nichols. Got a couple bucks only from  
 20 him also."

21 Q. Okay. Let's stop right there. Which offense is  
 22 he talking about there, based on your investigation?

23 A. The offense at 3416 East Belknap.

24 Q. And who is the victim?

25 A. That is Jorge Contreras.

1 Q. And again he says "I did it. I did it. I did  
 2 it". Is there any mention of Jose Ramos?

3 A. None.

4 Q. Was there a gun involved?

5 A. Yes.

6 Q. And someone actually got shot?

7 A. Yes.

8 Q. Would you go to the next one, please.

9 A. "The next one at Ridgmar Mall. You say you have  
 10 me on video, and I was not even there, but now I  
 11 remember. I was alone. A man by Penney's, he was in his  
 12 car, and I do not remember what kind of car, and I walked  
 13 up to him and I pointed the gun and I demanded his wallet  
 14 and I told him that I wanted his debit card number. And I  
 15 tried to use it at a store down the street and found out  
 16 it was fake."

17 Q. Okay. Who was the victim in that offense?

18 A. Justin Morris.

19 Q. We've seen the video of that in court today; is  
 20 that correct?

21 A. Yesterday, yes.

22 Q. Or yesterday, I'm sorry. And you said Miriam  
 23 Oliveras was in the car. According to that video, did he  
 24 act alone?

25 A. During the robbery, yes. Afterwards, they were

1 Q. He starts that part of the statement off with the  
 2 words "I was also by myself"?

3 A. Yes.

4 Q. Is he referring back up to the first one?

5 A. Yes.

6 Q. So he's saying he was by himself on both of  
 7 these, both of these robberies, and he had a gun both  
 8 times?

9 A. Yes.

10 Q. What is the next one? Where does it start?

11 A. Here.

12 Q. Okay. Go ahead.

13 A. "The next thing I was involved in was a shooting  
 14 on Woodland, a friend's house, a female. He was making  
 15 too much noise and banging on the windows and asking for  
 16 money. I was over there visiting when the guy started.  
 17 And I tried to leave and they started fighting, and I ran  
 18 up to them with a gun on them and raised it up in the air  
 19 and it went off and I did not know where it hit him. I  
 20 was not aiming to hit him."

21 Q. Okay. And he says in that one -- first of all,  
 22 which offense is he talking about?

23 A. Referring to the -- I believe it's 1220 Woodland.

24 Q. And who is the victim?

25 A. Luis Luna.

1 together.

2 Q. Okay. Was a gun involved in that one?

3 A. Yes.

4 Q. Okay. What is the next one? Or keep going,  
 5 please. I'm sorry.

6 A. No, that's fine. The next one was on the 28th,  
 7 June, at 2800 Azle Avenue. "It was before the Bud --  
 8 Bus-wiser shooting. They were coming out of a bar. We  
 9 were driving down Azle Avenue. I was driving the green  
 10 Dodge Stratus and Joe was in the passenger side, and we  
 11 saw about four people in the parking lot of the bar. Joe  
 12 had the gun as he was on the passenger side and he went up  
 13 to the people and demanded their wallets. I got out of  
 14 the car to help him collect the wallets. Altogether we  
 15 got about \$1700. We split it up in half. We trashed the  
 16 wallets. We did not keep them."

17 Q. Okay. And on this one he says he's with Joe  
 18 Ramos, but now he's saying in this one he says that Joe  
 19 had the gun on that one; is that correct?

20 A. Yes.

21 Q. Okay. Can you go to the next one, please. I'm  
 22 sorry. Where did this occur? Which one is he referring  
 23 to?

24 A. That is the 2800 Azle Avenue in the parking lot  
 25 near the bar.

1 Q. What are the names of the victims associated with  
 2 that one?  
 3 A. Jorge Tamayo and Maximino Chavez.  
 4 Q. Okay. And what is the next one?  
 5 A. "The morning of the Budweiser shooting we were  
 6 driving around and I was driving the Dodge Stratus, and we  
 7 were passing by the Texaco station to get some cigarettes,  
 8 and Joe came up with the idea to rob the beer man. Joe  
 9 said he thought they would have a bunch of money from the  
 10 delivery. I had the gun and I parked the car in the next  
 11 block, and I got out of the car with the gun and I  
 12 followed Joe as he went up to the store. The beer guy was  
 13 inside and I stayed by the dumpsters. And Joe was  
 14 supposed to go by the pay phones. The beer man came back  
 15 outside. I went around to the driver's side of his  
 16 truck. I came out from behind the dumpster to where he  
 17 was. I pointed the gun at 'home' and told him to come  
 18 here, don't go nowhere. He said all right, all right.  
 19 And then I grabbed him by the shirt sleeve and the gun  
 20 went off. He did not give me his wallet. He tried to  
 21 give me his phone. While I was pulling him on the shirt,  
 22 the gun went off. When I had the gun pointed at him, it  
 23 was pointed high. Before all this happened, the  
 24 Budweiser -- Budweiser driver gave his wallet to Joe who  
 25 was standing by the pay phone."

22  
 1 "On the report date of 6/29/10 at 6:29 a.m.,  
 2 I was with Joe and we were in the Dodge Stratus and I was  
 3 driving, and we wanted to go try and make some money. I  
 4 had the gun and I seen the white -- I seen --"  
 5 Q. Let's stop before that one. On the one before  
 6 that, Ruben Martinez, is that who that refers to?  
 7 A. Yes.  
 8 Q. And what was the address of that one?  
 9 A. 2700 Azle Avenue.  
 10 Q. And the Defendant admits that he had the gun and  
 11 he actually shot Mr. Martinez; is that right?  
 12 A. Yes.  
 13 Q. Okay. And in -- ultimately Mr. Martinez died; is  
 14 that right?  
 15 A. Yes.  
 16 Q. Now, sorry, go to the next one, please.  
 17 A. I will start back at the -- where I think I was  
 18 supposed to leave off. "On the report date of 6/29/10 at  
 19 6:29 a.m., I was with Joe and we were in the Dodge Stratus  
 20 and I was driving, and we wanted to go try and make some  
 21 money. I had the gun and I seen this white guy pull up  
 22 into the parking lot of Lowe's. We both saw him and we  
 23 parked next to him, and the dude did not want to give me  
 24 his wallet. I got out of the car and went to the dude and  
 25 said give me your wallet, and I showed him my gun and

21  
 1 pointed it to the ground. And the guy turned around and  
 2 started running. And I shot at the ground a couple times  
 3 as he ran away."  
 4 Q. And which offense is he referring to?  
 5 A. The 6000 Quebec, Lowe's parking lot.  
 6 Q. Who is the victim in that?  
 7 A. Kenny Dodgin.  
 8 Q. And there the Defendant admits that he had the  
 9 gun and he's the one that did the robbery even though  
 10 Ramos was with him; is that right?  
 11 A. That is correct.  
 12 Q. And is that the end of the narrative part of  
 13 that?  
 14 A. Yes.  
 15 Q. Okay. And then there's a statement after that  
 16 about making statements to police or falsely doing that;  
 17 is that correct?  
 18 A. Yes, sir.  
 19 Q. And there's an ending time, and is there a  
 20 signature that appears at the bottom?  
 21 A. Yes.  
 22 Q. And whose signature does that appear to be?  
 23 A. Mark Soliz.  
 24 Q. Okay. Is there anything else on that report?  
 25 A. No, I don't believe so.

24  
 1 Q. Okay. Now, there was a lot of conversation  
 2 before and during when these statements were put together;  
 3 is that correct?  
 4 A. Yes.  
 5 Q. Okay. And you could hear on the video, which is  
 6 before the Jury already, how Detective Boetcher is  
 7 telling, "Hey, this is your statement, your statement",  
 8 correct?  
 9 A. Yes.  
 10 Q. And do you recall if Mr. Soliz said anything  
 11 about knowing, "Yes, this is my statement"?  
 12 A. Yes.  
 13 Q. Okay. So he said that, he acknowledged, "Yeah, I  
 14 know this is my statement". And they go on at that  
 15 point. And earlier in the video, could you hear Detective  
 16 Boetcher talking about something about seeing Mark Soliz  
 17 at the Texaco station? He confronts him with that during  
 18 the statement in the video part; is that correct?  
 19 A. Yes, he does.  
 20 Q. Okay. And did he tell him, "I see you crouching  
 21 down by a dumpster"?  
 22 A. Yes.  
 23 Q. "Wearing white tennis shoes. Why do you think I  
 24 took the shoes", correct?  
 25 A. Yes.

1 Q. So there was some knowledge, I guess, with you  
 2 and/or Boetcher at that time about something that had gone  
 3 on specifically with Mr. Soliz at the Texaco station in  
 4 relation to Ruben Martinez?

5 A. Yes.

6 Q. Can you tell me if there was a video, any video  
 7 from the convenience store at the Texaco station at the  
 8 time of the murder of Ruben Martinez?

9 A. Yes, there was.

10 Q. And was that video reviewed by Detective Boetcher  
 11 or you, Detective Boetcher, prior to having the  
 12 conversation with Mr. Soliz?

13 A. Yes.

14 Q. Okay. And did Mr. Soliz in his statement that we  
 15 saw admit that he was the one crouching by the dumpster?

16 A. Yes, he actually detailed what we saw on the  
 17 video, he detailed verbally to us.

18 Q. Okay. Let's take a look at State's Exhibit  
 19 No. 3 which is the second statement. And, again, I won't  
 20 ask you to read it, but does it have the same admonition  
 21 of his rights at the very top just like the other one did?

22 A. Yes, it does.

23 Q. Okay. And then it also has the same in bolded or  
 24 capitalized, all capped statement, says his name and he  
 25 can read, write and understand the English language?

25

1 stuff, what offense is that?

2 A. You said if they do not have?

3 Q. If they have a gun but they're forcing their way  
 4 into someone's home without permission.

5 A. Oh, aggravated robbery.

6 Q. Well, forcing into the home?

7 A. I guess I'm not clear on the question.

8 Q. Would that be a burglary if somebody is going  
 9 into someone's home without consent?

10 A. Okay. That's why I was asking about the gun. No  
 11 gun, just going in.

12 Q. Either way.

13 A. Okay. Yes.

14 Q. I'm asking you.

15 A. Yes, burglary.

16 Q. Okay. So at this particular point in the  
 17 statement, has Mr. Soliz admitted to himself committing  
 18 the act of aggravated robbery and burglary against Nancy  
 19 Weatherly?

20 A. Yes.

21 Q. Okay. Go on.

22 A. "And she backed up and she -- and just told her  
 23 to sit down on the couch, and me and Joe started looking  
 24 for things to take. We found two flat-screen TVs, a  
 25 computer, and some quarters. I was looking for stuff too,

26

1 A. Yes.

2 Q. And is this -- this is the second statement that  
 3 was taken another time where more information was learned,  
 4 and y'all exited the room or Boetcher and Mr. Soliz exited  
 5 the room; is that right?

6 A. Yes.

7 Q. Okay. Can you read what that statement says.

8 A. "We were just driving around until we got the  
 9 idea to get some money. I was driving the green Dodge  
 10 Stratus and we ended up in Godley. I was familiar with  
 11 that area, and we found this house out in the middle of  
 12 nowhere. Joe said we could just go up to the door and ask  
 13 for directions, and we parked the Dodge in the driveway  
 14 and went up to the house. We both went up to the front  
 15 door and knocked on the door. It was a white female,  
 16 elderly, opened the door. Joe asked for -- asked her for  
 17 directions. And I had the gun, and I raised it up and  
 18 kind of walked in the house as she backed up."

19 Q. Let me stop you right there. If somebody, just  
 20 based on your training, if somebody puts a gun to  
 21 somebody, shows a gun and is attempting to take their  
 22 stuff, what kind of an offense is that?

23 A. Aggravated robbery.

24 Q. Okay. If somebody, using a gun or not, forces  
 25 their way into someone's home in order to take their

1 and I sat the gun down on the dining room table and I  
 2 started looking for stuff. And I asked Joe what's she  
 3 doing, since I left the gun on the table. And Joe went in  
 4 there and got the gun. I was still looking for things,  
 5 and that was it, and time to go. I was out by the car,  
 6 and then the gun went off. Joe was the one in the house  
 7 when the gun went off. And Joe closed the garage door.  
 8 And we left and came back to Fort Worth."

9 Q. Okay. And so at this point he is blaming, saying  
 10 that he's there and a participant, and but blaming the  
 11 actual shooting of Ms. Weatherly on Jose Ramos; is that  
 12 right?

13 A. Yes.

14 Q. And you obviously have seen the video, and  
 15 there's more conversation with him, and eventually he does  
 16 admit that he's the one that shot Nancy Weatherly,  
 17 correct?

18 A. Yes.

19 Q. Can you read the last thing that he wrote in his  
 20 own handwriting with his own initials.

21 A. "It was me that shot the woman, M. period A.  
 22 period S."

23 Q. So the last thing he says in that statement, it  
 24 was him that shot that woman, correct?

25 A. Yes.

27

1 Q. So according to his statement, ultimately he shot  
 2 and killed two different people in the presence of Jose  
 3 Ramos, correct?  
 4 A. Yes.  
 5 Q. And ultimately he says he's the one that did  
 6 both?  
 7 A. Yes.  
 8 Q. Yet you can also see what we just wrote or what I  
 9 just wrote on the board, and from these, he also did  
 10 robberies and shot people completely without Jose Ramos?  
 11 A. Yes, he did.  
 12 Q. Okay. So he could act alone or he could act with  
 13 Ramos?  
 14 A. Yes.  
 15 Q. Okay. Part of your investigation, you were able  
 16 to find that a couple of the guns stolen from the  
 17 Circelli's house was pawned on the 23rd of June, 2010,  
 18 correct?  
 19 A. Yes.  
 20 Q. Okay. By a person by the name of Ramon Morales?  
 21 A. That's correct.  
 22 Q. Who I think said -- testified he got them the day  
 23 before.  
 24 A. (Witness nods.)  
 25 Q. From Mark Soliz, tried to buy that handgun, that

29

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1 Q. And robberies?  
 2 A. Yes.  
 3 Q. So if that is correct, if he actually received  
 4 the gun, and by "he" I mean the Defendant Mr. Soliz, from  
 5 Jose Ramos, he would have gotten it before any of these  
 6 shootings or robberies started; is that correct?  
 7 A. Yes.  
 8 Q. So the gun would have been in whose possession  
 9 the moment the violence started?  
 10 A. Mark Anthony Soliz.  
 11 MR. STRAHAN: I'll pass the witness.  
 12 FURTHER RECROSS-EXAMINATION  
 13 BY MR. HEISKELL:  
 14 Q. Detective Paine, I have a few more questions for  
 15 you, sir. And want to talk about some of the things that  
 16 was referenced yesterday concerning Ramos's statements to  
 17 you and Detective Boetcher. Okay?  
 18 A. Yes, sir.  
 19 Q. And I believe y'all -- you told us as well that  
 20 Ramos had indicated that he didn't like guns, didn't touch  
 21 a gun, didn't want to be around guns, some words to that  
 22 effect; isn't that true?  
 23 A. Yes.  
 24 Q. And that he also indicated in that same context  
 25 and conversation about Soliz not having it all up here.

30

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1 9 millimeter that Soliz had other plans for?  
 2 A. Correct.  
 3 Q. You've heard that before. You weren't in here  
 4 while he was testifying, but you've heard that before,  
 5 correct?  
 6 A. Yes.  
 7 Q. And there was some talk yesterday when -- or not  
 8 yesterday, but earlier about the possibility that Mark  
 9 Soliz actually got that gun, the 9 millimeter, from  
 10 Ramos. Have you heard that also?  
 11 A. Yes.  
 12 Q. Okay. And so if Ramon Morales says that, and you  
 13 know from records when the guns were pawned, if he says it  
 14 happened on June 22nd, the fact that Mark Soliz had the  
 15 guns to give him or whatever and had a use for that gun  
 16 puts the 9 millimeter in Mark Soliz's hand, even if it's  
 17 from Jose Ramos, on June 22nd?  
 18 A. On or before then.  
 19 Q. On or before then, right. Okay. So if he got it  
 20 from Jose Ramos, he would have got it on or before this  
 21 date, correct?  
 22 A. Correct.  
 23 Q. June 22nd, 2010. When did the shootings in this  
 24 case start?  
 25 A. In -- on the 24th of June, 2010.

1 Remember that part we were talking about?  
 2 A. Yes.  
 3 Q. Now, with regard to Ramos's statements, you've  
 4 heard that axiom, if you will, that actions speak louder  
 5 than words?  
 6 A. Yes.  
 7 Q. And as a matter of fact, Ramos's actions you look  
 8 at, we discover that back on June 22nd when we talk about  
 9 the Circelli burglary?  
 10 A. Yes, sir.  
 11 Q. That is likely that he's the one that kicked that  
 12 door in to begin the burglary of that home; isn't that  
 13 true?  
 14 A. Yes, sir.  
 15 Q. And you know from your own investigation that  
 16 once entering that home, that he took the guns, wrapped  
 17 them up in the quilt, and the long rifles as well as  
 18 taking the handgun; is that correct?  
 19 A. Yes.  
 20 Q. And that he as well gave or sold that 9  
 21 millimeter to Mark Anthony Soliz; isn't that true?  
 22 A. Yes.  
 23 Q. And we also know that when he talks about not  
 24 being -- wanting to be around guns and not wanting to be  
 25 associated with guns and words to that effect, we also

1 know that on June 29th at around 3:30 a.m., the Ramirez  
2 drive-by, you referenced that, remember?

3 A. Yes.

4 Q. And Ramirez is a 26-year-old; is that correct?

5 A. I believe so.

6 Q. And you also know that there was a relationship  
7 between Jose Ramos and members of that particular family  
8 on Pearl Street. You knew that, didn't you?

9 A. Based on the investigation and the interviews, it  
10 was my understanding that there was some sort of knowledge  
11 of one another.

12 Q. Right. And it was that particular address, Pearl  
13 Avenue, where Ramos had a relationship with someone in the  
14 Ramirez family where this drive-by shooting took place  
15 with Ramos present; isn't that true?

16 A. Yes.

17 Q. And that Ramos could have, if he said he was  
18 mortified and didn't want to be around, he could have  
19 easily left or turned around or walked away or drove away  
20 or whatever from that residence. He could have done that,  
21 couldn't he?

22 A. I don't believe he was driving.

23 Q. Well, walking away then?

24 A. He could have exited the vehicle, yes.

25 Q. Right. And then he continued on with, if you

34 1 look at what his actions are compared to his words, with  
2 respect to the Enrique Samaniego -- and I always torture  
3 that last name -- shooting; is that right?

4 A. As far as?

5 Q. Him being present, him being with Mark Soliz.

6 A. Yes.

7 Q. Okay. And he didn't run away from that incident,  
8 did he?

9 A. No.

10 Q. He likely was egging Soliz on, wouldn't you agree  
11 with that?

12 A. I don't know what he was participating in as far  
13 as words, whether he was agging him on or not.

14 Q. But he also shared in the proceeds of this and  
15 other robberies and so forth with regard to Soliz; isn't  
16 that true?

17 A. Yes, he was a criminal.

18 Q. All right. And continuing on that same evening,  
19 June 29th, around 5 or 6:00 that evening the -- I'm sorry,  
20 that morning, excuse me, the Ruben Martinez shooting?

21 A. Yes.

22 Q. He's seen on that video?

23 A. Yes.

24 Q. And he's seen there participating. We also saw  
25 the footprint that was referenced earlier; is that

1 correct?

2 A. Yes.

3 Q. And he could have easily walked away from that or  
4 run away from that, but he was there along with Mark  
5 Anthony Soliz when that took place; isn't that true?

6 A. Yes, he was.

7 Q. And this thing about being mortified about what  
8 happened and, "Oh, I was horrified"; yet he continued to  
9 stay with Mark Soliz during this entire episode; isn't  
10 that true?

11 A. Yes, he did.

12 Q. And yet he continued on when they went to  
13 Benbrook. Well, let's stop at the Lowe's first. Go  
14 ahead.

15 A. No, you're fine.

16 Q. With the Lowe's first. And he participated in  
17 that incident, did he not?

18 A. Yes, he did.

19 Q. In fact, he was the getaway driver for that,  
20 wasn't he?

21 A. Yes.

22 Q. And he could have easily, if he were so horrified  
23 by all this, turned that vehicle around and run Mark Soliz  
24 over, couldn't he have?

25 A. Yes, he could have.

36 1 Q. But he continued with him. He stayed with him  
2 shoulder to shoulder, didn't he?

3 A. Yes, they remained together throughout the day.

4 Q. And then he went to Benbrook and kicked the doors  
5 in in Benbrook at the homes there, Jose Ramos, didn't he?

6 A. The doors were forced entry. I'm not sure that  
7 he did it, but yes.

8 Q. And, well, you knew that was his role, to use his  
9 foot to kick the doors in in burglaries, didn't you?

10 A. He has done it before or appears to have done it  
11 before.

12 Q. He shared in the proceeds there as well, didn't  
13 he?

14 A. Yes.

15 Q. And then we get to Johnson County, and he was  
16 there shoulder to shoulder with Mark Anthony Soliz,  
17 correct?

18 A. Yes, he was.

19 Q. And after the poor lady, Ms. Weatherly, was  
20 killed, he was the one that chose to get into her truck,  
21 take it closer to the home, and load it up with the TVs,  
22 with other items and head to Fort Worth; isn't that true?

23 A. I don't believe he chose that on his own solely.  
24 I think that was a mutual agreement.

25 Q. Well, he could have easily chose not to do that?

1 A. Yes, he could have.

2 Q. He could have easily stated, "Hey, man, I'm out  
3 right now." But he continued on shoulder to shoulder with  
4 Mark Soliz, didn't he?

5 A. Yes, he did.

6 Q. And as a matter of fact, back when that  
7 Budweiser, Mr. Martinez's situation, he was the one that  
8 suggested to Mark Soliz, "Hey, he'll probably have some  
9 money as a result of these deliveries", to egg him on to  
10 do this, didn't he?

11 A. According to Mr. Soliz's statement, yes, that's  
12 what happened.

13 Q. And also according to Ramos. Didn't he tell you  
14 that?

15 A. I don't recall that he stated that he said that  
16 was the case. I believe, if I remember correctly, Ramos  
17 just indicated that they believed he would have money, not  
18 that he's -- personally believed that; that they  
19 collectively believed that that would happen or that that  
20 delivery man would have money.

21 Q. But once again, his actions, the like, his words,  
22 he was shoulder to shoulder with Mark Soliz?

23 A. Yes.

24 Q. And you see in the statement that Mark Soliz  
25 gave, on the video, the written statements here, that

1 Soliz eventually became cooperative with you-all and told  
2 you what you-all wanted to get from him essentially; isn't  
3 that true?

4 A. For the majority, yes.

5 Q. Yet Ramos is the one who refused to sign that  
6 last statement and invoke his right to counsel and end the  
7 interview?

8 A. Yes.

9 MR. HEISKELL: Pass the witness.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. STRAHAN:

12 Q. Is it clear from everything you know about this  
13 case that Mark Soliz is perfectly capable of robbing and  
14 shooting people whether Ramos is there or not?

15 A. Yes, it is.

16 Q. In fact, he did, didn't he?

17 A. Yes.

18 Q. Do you have information from any source other  
19 than Soliz himself that Ramos had the gun in any of these  
20 offenses?

21 A. No.

22 Q. So outside of that Defendant right there, you've  
23 never heard from anybody that Ramos was the one wielding  
24 the gun in any of those offenses?

25 A. No.

1 is that correct?

2 A. Yes, I believe so.

3 MR. HEISKELL: Thank you. That's all.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. STRAHAN:

6 Q. Were you aware that in gunshot residue, there's  
7 two different kinds of residue? There's characteristic,  
8 which is from the primer, and then there's other types of  
9 residue that are commonly associated with it.

10 A. Yes, my understanding is that even if you don't  
11 fire a weapon, if you're in close proximity to someone who  
12 does fire a weapon, you can have clothing or particles of  
13 that residue on, about you or inside the vehicle or  
14 anywhere else.

15 Q. Okay. And particles can be different based on  
16 your proximity to a firearm that has gone off; is that  
17 right?

18 A. Yes.

19 Q. Where the characteristic closer to the actual  
20 firing of the gun?

21 A. Correct.

22 Q. And you just testified that you are aware that  
23 Jose Ramos had some particles of one of those types on  
24 him; is that correct?

25 A. Yes.

1 Q. And Mark Soliz also had some of those particles  
 2 on him, one of those two kinds or both of those kinds; is  
 3 that correct?

4 A. Yes.

5 Q. Were you aware that Nancy Weatherly also had  
 6 particles on her?

7 A. I was not.

8 MR. STRAHAN: I'll pass the witness.

9 MR. HEISKELL: Nothing further, Your Honor.

10 THE COURT: May the witness be excused?

11 MR. HEISKELL: Yes, sir.

12 MR. STRAHAN: Yes, sir.

13 THE COURT: Thank you. You may be excused.

14 MR. STRAHAN: Our next witness is five

15 minutes from here. Can we take a short break, Judge?

16 THE COURT: Ladies and gentlemen, while we're  
 17 getting ready for the next witness, we'll take a 15-minute  
 18 recess. We'll come back at five minutes after 11 (sic).

19 (Recess taken from 9:48 to 10:06 a.m.)

20 (Jury not present.)

21 THE COURT: You may be seated. Let's go on  
 22 the record. The attorneys for both sides are present,  
 23 Mr. Soliz is present, and the Jury is not present. We're  
 24 going on the record.

25 We had a short off-the-record discussion with

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1 Medical Examiner pictures, and one of the things that the  
 2 Prosecutor argued and under the law is appropriate is that  
 3 they are just little 8-by-10s, but then he showed them on  
 4 the screen. This is much worse than those pictures.

5 And under Rule 403, Your Honor, we believe  
 6 they should be excluded for being, number one,  
 7 substantially more prejudicial than probative. And we'd  
 8 ask the Court to look at the video in camera. And then  
 9 number two, cumulative of what certainly promises to be an  
 10 awful lot of crime scene photographs that may contain the  
 11 exact same thing.

12 We would also object to, you know, a  
 13 multitude of crime scene photographs which depict that  
 14 picture. If they are going to be these huge, large,  
 15 blown-up things, we just think that, Your Honor, is  
 16 substantially more prejudicial than probative, but I  
 17 haven't seen those exhibits.

18 MR. HEISKELL: Your Honor, and furthermore  
 19 under 403 that I think it's unduly necessary in light of  
 20 what we already have on the record and also what we  
 21 anticipate from the crime scene officers at the Weatherly  
 22 home. And the videotape, I believe Mr. Chambless has  
 23 represented is about 12 to 15 --

24 MR. CHAMBLESS: Roughly, yes.

25 MR. HEISKELL: -- minutes in length. And I

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1 regard to trial schedule, and it seems that the current  
 2 pace of the trial and the current pace is appropriate for  
 3 both the State and Defense, and neither side has asked me  
 4 to increase the amount of hours or to change the pace of  
 5 the trial at this particular point.

6 And Mr. Chambless has a matter to bring to my  
 7 attention before we get the Jury in; is that correct?

8 MR. CHAMBLESS: Yes, sir, in order to save  
 9 time. There is a witness anticipated shortly, Mike  
 10 Gaudet. He was the first Johnson County Detective to  
 11 arrive and take control of the crime scene. And the very  
 12 first thing he did, I expect his testimony to be, he took  
 13 a videotape of the exterior and then in the inside of the  
 14 house of Nancy Weatherly. It's approximately 12 to 15  
 15 minutes. And we're going to ask permission to -- that he  
 16 play that, this CD which has been provided. And that's  
 17 our -- that's the issue, I think.

18 MR. WESTFALL: And, Your Honor, as the Court  
 19 is aware by now certainly, we can represent it will  
 20 continue this way, we are not contesting anything like  
 21 cause of death, crime scene preservation of the scene,  
 22 anything like that. This is a videotape of a murder scene  
 23 where the deceased is still on the floor. It is going to  
 24 be shown to the Jury on what looks like a 10-foot-  
 25 by-6-foot screen. We had this conversation about the

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1 agree with Co-Counsel, seeing that is very graphic and  
 2 very prejudicial, I guess for lack of a better term, Your  
 3 Honor. And we think the -- that certainly outweighs the  
 4 probative value of what we already know and what's already  
 5 in the record.

6 MR. WESTFALL: We have two photographs, Your  
 7 Honor, that State is going to seek to admit, both of which  
 8 are in the sort of 16 by 20 or 24 range that show the  
 9 crime scene as the detectives found it. And we believe  
 10 that the video would certainly be cumulative of that and  
 11 therefore not probative at all and only prejudicial. So  
 12 we would ask the Court to exclude the video, and certainly  
 13 review it in camera if the Court needs to do so to make a  
 14 ruling.

15 MR. CHAMBLESS: I'll represent to the Court,  
 16 and Mr. Westfall can correct me if I'm wrong, but of the  
 17 12 minutes, perhaps a minute, maybe a minute and a half of  
 18 the 12 minutes shows -- depicts the -- Nancy Weatherly's  
 19 body and position of the body in relation to evidence that  
 20 was later collected. The balance of the videotape just  
 21 shows the condition of the living room and different  
 22 bedrooms in the house.

23 MR. WESTFALL: Well, if that part of the  
 24 video would be relevant, then we would ask it be -- that  
 25 the minute and a half, which is an extremely long time, be

1 redacted. It's just piling on as cumulative and it's  
2 substantially more prejudicial than probative.

3 THE COURT: I'll review the video in  
4 chambers. Do you want me to do that at this point now?  
5 Do you plan on playing it if I allow it?

6 MR. CHAMBLESS: Yes, sir.

7 THE COURT: Can I have the video and I'll  
8 look at it. And I'll also note that the video screen that  
9 Mr. Westfall talks about being large is on the clear  
10 opposite side of the courtroom from the Jury Panel. It is  
11 not presented in front of the Jury. It's on the opposite  
12 side of the courtroom.

13 MR. WESTFALL: I agree, Your Honor, it is.

14 THE COURT: I think the measurements of the  
15 courtroom are part of the packet that the Sheriff's  
16 Department has with regard to security plans.

17 MR. CHAMBLESS: Judge, if I could, I would  
18 mark that tentatively as Exhibit 188, I believe.

19 MR. WESTFALL: That's the videotape is 188?

20 MR. CHAMBLESS: Yes, sir.

21 MR. WESTFALL: We also discussed those two  
22 pictures, if you want to do that for the record.

23 MR. CHAMBLESS: Judge, we would be glad to,  
24 as far as the photographs, the still photographs of Nancy  
25 Weatherly, we would -- I would be -- I'll restrict that to

46 1 one of the two if the Court allows that. I'll offer this  
2 one and not this one.

3 MR. WESTFALL: And at this point, Your Honor,  
4 I mean, our objection is to the video as being cumulative  
5 of these photographs. I mean, I think that there is a  
6 legal reason to have these photographs, so we're not going  
7 to -- certainly I think picking one is a good idea. But I  
8 understand that those are relevant and there's not a 403  
9 issue. My objection is directed towards the minute and a  
10 half of the video.

11 THE COURT: Is there any benefit of me taking  
12 this in chambers since the Jury is not here or just  
13 playing it here in the courtroom?

14 MR. CHAMBLESS: That's fine.

15 MR. HEISKELL: That's fine.

16 THE COURT: Play it here, then you can  
17 identify the exact spot that you think is a problem.

18 MR. CHAMBLESS: Yes, sir.

19 (Pause in proceeding.)

20 MR. WESTFALL: Your Honor, would you mind  
21 doing it in chambers?

22 THE COURT: That's fine.

23 MR. WESTFALL: Yeah.

24 THE COURT: Thank you. I'll be back in a few  
25 minutes.

45 1 (Recess taken from 10:17 to 10:32 a.m.)  
2 THE COURT: You may be seated. The State's  
3 attorneys are present, Defense attorneys present,  
4 Defendant is present. Jury is not present. I reviewed  
5 State's Exhibit No. 188 upstairs in chambers, find that  
6 the objection to its admissibility as stated would be  
7 overruled. The exhibit would be admissible if offered,  
8 subject to any other foundation requirements that might be  
9 needed.

10 The question is if that exhibit is offered  
11 and played, for the most part, there's just a few sounds  
12 on there that can't be transcribed by the Court Reporter.  
13 There may or may not be something that's more or less  
14 unintelligible said by something that I think would be  
15 Officer Fuller, just if I recognized his voice, but I  
16 don't know that I could really ascertain what he said. So  
17 basically the point the Court would make is that if that  
18 video is played in court, the Court Reporter would not  
19 transcribe any of the audio in that particular video  
20 unless there's a request otherwise.

21 MR. CHAMBLESS: Thank you, Judge.

22 THE COURT: All right. Everybody ready for  
23 the Jury to come in?

24 MR. HEISKELL: Yes.

25 (Pause in proceeding.)

46 1 MR. CHAMBLESS: One other thing.  
2 (At the bench.)  
3 MR. CHAMBLESS: There was one other thing.  
4 They had a Motion in Limine about anything that identified  
5 Nancy Weatherly as a cancer patient. I anticipate  
6 testimony to be Gaudet says there was a letter addressed  
7 to Nancy Weatherly in the mailbox. It opens with that.  
8 The purpose of videotaping that is to show who had  
9 ownership, right to possession of the premises. It does  
10 have a return address of Texas Oncology. I'm just  
11 bringing it up because there was a Motion in Limine.

12 MR. WESTFALL: And, Your Honor, we object to  
13 it. We believe it's victim impact. And it is  
14 certainly -- her address is not a contested issue in this  
15 case. There's no reason to prove it. It's going to be  
16 assumed. It's going to be accepted. There's no probative  
17 value whatsoever. And like I said, victim impact, and  
18 also therefore not relevant in the Guilt/Innocence case,  
19 and also Rule 403.

20 MR. CHAMBLESS: Our position is that it's  
21 admissible for reasons stated.

22 MR. HEISKELL: But there are other mailings.  
23 MR. CHAMBLESS: That was the only one.  
24 MR. HEISKELL: I recall there was another.  
25 MR. WESTFALL: I mean --

1 THE COURT: The fact that that letter -- I  
 2 saw the letter on the video. That letter alone does not  
 3 describe her as a cancer patient or indicate that she's  
 4 receiving anything other than a lab report or whatever the  
 5 envelope says. I would allow the video as it was  
 6 presented in 188 and overrule your objection with regard  
 7 to the letter at the beginning of the video, but I'm  
 8 not -- I'm not expanding that to allow any discussion of  
 9 her medical condition with regard to cancer at this  
 10 particular point.

11 MR. WESTFALL: And we also -- we also object  
 12 to the video, Your Honor, on the grounds that it contains  
 13 hearsay and also testimonial statements that would be in  
 14 violation of the confrontation clause, so.

15 THE COURT: What statements are contained on  
 16 the video that fit in that category?

17 MS. JACK: Judge, I think we can turn the  
 18 volume down if there's an objection.

19 MR. WESTFALL: Turning the volume down would  
 20 take care of that as long as the Jury doesn't get access  
 21 to the volume later on.

22 THE COURT: Well, the only time that that  
 23 video would be replayed for the Jury would be in the  
 24 courtroom.

25 MR. HEISKELL: Okay. Good.

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1 spelled out on the form, State's Exhibit No. 189, and she  
 2 transported those without any tampering or anything to the  
 3 Medical Examiner's Office. So I would offer 189 by  
 4 stipulation.

5 MR. WESTFALL: And we have no objection.

6 THE COURT: 189 is admitted.

7 (State's Exhibit No. 189 admitted.)

8 MR. CHAMBLESS: State's Exhibit 190 is also a  
 9 chain of custody form. And I anticipate the testimony  
 10 that we're covering on this would be that Mike Gaudet on  
 11 September 13th, 2010, transported two items that were  
 12 collected from Nancy Weatherly's house, Exhibit BRB-01, a  
 13 fired shell casing, and BRB-16, a spent bullet lead, and  
 14 that he transported those items from the Johnson County  
 15 Sheriff's Department to Jennifer Nollkamper in Fort Worth,  
 16 Texas, on September 13th, 2010. So we would offer 190 for  
 17 that purpose.

18 MR. WESTFALL: Did you say spent bullet lid?

19 MR. CHAMBLESS: Lead.

20 MR. WESTFALL: Lead. We have no objection,  
 21 Your Honor.

22 THE COURT: Admitted.

23 (State's Exhibit No. 190 admitted.)

24 MR. CHAMBLESS: Also offering 190 (sic) and  
 25 191 which are major case prints for Mark A. Soliz that

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1 THE COURT: So at that point we would have to  
 2 have a reminder that there's no audio.

3 MR. WESTFALL: All my other objections still  
 4 stand for the record, Your Honor.

5 THE COURT: Okay.

6 (In open court.)

7 THE COURT: Yes, sir, bring in the Jury.  
 8 (Jury present.)

9 THE COURT: You may be seated.  
 10 Please call your next witness.

11 MR. CHAMBLESS: Yes, Your Honor. As we get  
 12 started now with the next witness and before the next  
 13 witness, there's been a stipulation agreed to between the  
 14 State and the Defense with regard to certain documents.  
 15 And if I may, I'll just speak --

16 MR. HEISKELL: Right.

17 MR. CHAMBLESS: -- speak to those. First  
 18 there's a document marked State's Exhibit No. 189, and it  
 19 is a chain of custody form and it shows -- it represents  
 20 that on March 10th, 2011, Tina Hodnett of the Johnson  
 21 County Sheriff's Department took the evidence items listed  
 22 on the form, State's Exhibit 189, from the Johnson County  
 23 Sheriff's Department to the Tarrant County Medical  
 24 Examiner's Office in Fort Worth. And her testimony would  
 25 be that she collected those items. Those items are

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1 were utilized in this case by Bill Walker and Tom Ekis.

2 MR. WESTFALL: No objection.

3 MR. CHAMBLESS: 191 and 192. And that the  
 4 person, the Defendant in this case, Mark Soliz, is one in  
 5 the same person whose photographs are shown on State's  
 6 Exhibit 191 and 192.

7 MR. WESTFALL: 191 and 192 are both Mark  
 8 Soliz?

9 MR. CHAMBLESS: Yes, sir.

10 MR. WESTFALL: No objection, Your Honor.

11 THE COURT: 191, 192 are admitted.

12 (State's Exhibit Nos. 191 - 192 admitted.)

13 MR. CHAMBLESS: Also finally, 193 and 194  
 14 represent -- these are major case prints of Jose Clemente  
 15 Ramos that were utilized in the examination by Bill Walker  
 16 and Tom Ekis in this case, Co-Defendant to Mark Soliz.

17 MR. WESTFALL: And we stipulate those are  
 18 indeed Jose Ramos's prints.

19 MR. CHAMBLESS: We would offer 193 and 194.

20 MR. WESTFALL: No objection.

21 THE COURT: Admitted.

22 (State's Exhibit Nos. 193 - 194 admitted.)

23 MR. CHAMBLESS: State's Exhibit No. 195 which  
 24 we offer is a evidence release that shows that on July  
 25 20th of 2010, Max Courtney, of the Mansfield Police

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1 Department, released the items listed on this document,  
 2 State's Exhibit 195, to Garit, G-A-R-I-T, Bennett of the  
 3 Johnson County Sheriff's Department, and that Garit  
 4 Bennett transported those items in a secure way and placed  
 5 those into evidence at the Johnson County Sheriff's  
 6 Department on that date. Offer 195 for that purpose.

7 MR. WESTFALL: No objection, Your Honor.

8 THE COURT: Admitted.

9 (State's Exhibit No. 195 admitted.)

10 MR. CHAMBLESS: State's Exhibit 196 consists  
 11 of two pages. And we offer this for the purpose of  
 12 showing that on October 18th, 2011, Max Courtney released  
 13 major case prints of Jose Ramos, major case prints for  
 14 Mark Soliz, four latent prints from a television set, and  
 15 known impressions of shoe out soles to Garit Bennett, that  
 16 being on October 18th, 2011. Testimony would be he  
 17 received those items and transported those items, the  
 18 major case prints of Soliz and Ramos and four latent  
 19 prints from the television, to the Tarrant County Medical  
 20 Examiner's Office on October 18th, 2011. I believe that  
 21 is the stipulation with regard to those items.

22 MR. WESTFALL: You're offering this as 196?

23 MR. CHAMBLESS: Yes.

24 MR. WESTFALL: Your Honor, we have no  
 25 objection to State's 196.

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1 Q. Okay. How long have you been in law enforcement?  
 2 A. Been in law enforcement since '77. I've been  
 3 employed by the Sheriff's Office since '94.  
 4 Q. Okay. And just briefly describe your -- I guess  
 5 the entirety of your law enforcement career, where you  
 6 worked and what you've done.

7 A. Originally I started out with the Military Police  
 8 in the Army for seven years, then went out to Lockheed for  
 9 ten years. And then became a reserve with Johnson County  
 10 Sheriff's Office, and eventually became full-time employee  
 11 with Johnson County Sheriff's Office.

12 Q. On June 30th, 2010, did you receive a call about  
 13 a situation at 14356 FM 2331 in Godley, Texas?

14 A. Yes, we did.

15 Q. What was the source of your information?

16 A. Fort Worth P.D. had contacted my office and spoke  
 17 to another one of my detectives and advised that a  
 18 possible homicide out at that address, and we were in the  
 19 process of obtaining the information.

20 Q. Okay. So did you and other officers go to that  
 21 location, go to Godley, Texas?

22 A. Yes, sir, we did.

23 Q. Did you yourself go to that location?

24 A. Yes, sir, I did.

25 Q. And describe generally the outside, the exterior,

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1 THE COURT: Admitted.

2 (State's Exhibit No. 196 admitted.)

3 MR. WESTFALL: Is that all?

4 MR. CHAMBLESS: That's all for now.

5 Judge, we call Mike Gaudet at this time.

6 THE COURT: Please raise your right hand.

7 (Witness sworn.)

8 THE COURT: Thank you. Have a seat.

9 MICHAEL GAUDET,

10 Having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CHAMBLESS:

13 Q. Please state your full name.

14 A. Michael Joe Gaudet.

15 Q. And, Mr. Gaudet, what's your occupation?

16 A. I'm a Lieutenant with the Johnson County  
 17 Sheriff's Office.

18 Q. What are your responsibilities as a Lieutenant  
 19 with Johnson County?

20 A. I'm in charge of the Criminal Investigations  
 21 Division where I supervise 16 detectives. I'm the Crime  
 22 Scene officer, the videographer, the photographer, latent  
 23 print examiner. I also assist in supervision of the  
 24 school resource officers, courthouse personnel and  
 25 warrants and transport.

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1 where you went, what it looks like.

2 A. Residence is located in the rural section of  
 3 Godley, Texas. It's more of a ranch style where the house  
 4 is set off the highway about 300, 200 feet. It's got a  
 5 cattle guard, a white pipe fence, surrounded by a  
 6 three-strand bob-wire fence. The -- it's a ranch style  
 7 house, red brick, I believe it's white trim. Had a pool  
 8 to the back on the right-hand side with a pool house, that  
 9 was surrounded by a chain-link fence. And then there was  
 10 livestock roaming freely about the property.

11 Q. Okay. What time did you get there?

12 A. I believe it was 9 something.

13 Q. Okay. Were the other officers who had arrived  
 14 there, had they received instructions as far as what they  
 15 were to do, where they were to be, prior to your -- before  
 16 your getting there?

17 A. Yes, sir, they were.

18 Q. What was the protocol or procedure?

19 A. Detective -- Deputy Truitt had already gone out  
 20 to the scene. They had verified that there was a deceased  
 21 person. They then secured the front gate, started a crime  
 22 scene log, and waited arrival of the other detectives.

23 Q. Okay. And was it -- were they instructed no one  
 24 was to enter the house until you got there?

25 A. Correct.

1 Q. All right. And why is that?  
 2 A. To protect the scene.  
 3 Q. And is -- what is your responsibility with regard  
 4 to crime scene or your responsibility that day with regard  
 5 to crime scene?  
 6 A. Initially my responsibility is to determine  
 7 whether there's an actual death. Make sure that the scene  
 8 is protected by crime scene tape, either enlarge or narrow  
 9 it down. Assign -- make sure somebody is assigned to  
 10 conduct a crime scene log at the front gate or wherever we  
 11 determine the entrance to be. Then hand out assignments  
 12 as far as who is going to do photography, who is going to  
 13 do videography, who is going to be the assigned case agent  
 14 and so forth.  
 15 Q. Now, approximately an hour and a half after you  
 16 were there, did something change as far as the  
 17 responsibility for crime scene processing?  
 18 A. Yes, sir.  
 19 Q. And what changed?  
 20 A. I was advised that Max Courtney from Mansfield  
 21 P.D., who is a crime scene specialist, was in route to the  
 22 scene at the direction of the District Attorney's office.  
 23 Q. And so at some point did Max Courtney arrive?  
 24 A. Yes, he did.  
 25 Q. Did he bring others with him?

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1 A. Yes, they do.  
 2 MR. CHAMBLESS: Okay.  
 3 MR. WESTFALL: No objection, Your Honor.  
 4 THE COURT: Admitted.  
 5 MR. CHAMBLESS: It's 197, I believe the last  
 6 number is 208, we offer those at this time.  
 7 THE COURT: 197 through 208 are admitted.  
 8 (State's Exhibit Nos. 197 - 208 admitted.)  
 9 Q. (BY MR. CHAMBLESS) Mike, if you wouldn't mind,  
 10 come on down and let's -- okay. If you would stand over  
 11 here, please. All right. First of all, this marked 197,  
 12 tell us what we're looking at here.  
 13 A. That is a picture of the Weatherly residence  
 14 standing in the driveway proceeding up to the residence.  
 15 Q. Okay. This one is -- I guess to go in order, we  
 16 would go here. This one is marked 198. What are we  
 17 seeing here?  
 18 A. Standing at the -- standing at the end of the  
 19 concrete driveway that leads into the garage of the  
 20 residence.  
 21 Q. Okay. 199, please.  
 22 A. That's interior of the garage.  
 23 Q. I believe the next one would be 200. Where are  
 24 we at this location?  
 25 A. Standing outside the chain-link fence at the edge

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58  
 1 A. Yes, he did.  
 2 Q. Was Brandon Blansit one of the other individuals?  
 3 A. Yes, he was.  
 4 Q. Was the crime scene, Nancy Weatherly's house,  
 5 released to them for their work?  
 6 A. Correct.  
 7 Q. Okay. And at that point did you and Johnson  
 8 County, I guess, back off and allow them to take control  
 9 of the crime scene?  
 10 A. Yes, sir, we did.  
 11 Q. Okay. I want to show you a group of pictures,  
 12 and starting with 197, take a minute, see if you recognize  
 13 these photographs, please.  
 14 A. (Witness complied.)  
 15 Q. Do you recognize the photographs shown on these  
 16 exhibits?  
 17 A. Yes, sir, I do.  
 18 Q. And were these photographs taken at or near the  
 19 time that you were there?  
 20 A. Yes, they were.  
 21 Q. And do they fairly and accurately show the -- I  
 22 guess the condition of the house, the bedrooms and  
 23 different portions of the house at the time you arrived  
 24 that morning about approximately 9 a.m. on June 30th,  
 25 2010?

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 1 of the garage looking into the back yard.  
 2 Q. 201, what is shown here?  
 3 A. Standing on the back covered patio looking at a  
 4 pair of French doors with one door open.  
 5 Q. Okay. This is on the backside of the house?  
 6 A. Yes, it is.  
 7 Q. Okay. Now 202?  
 8 A. It's the interior of the residence, to the left  
 9 side of the doorway looking back towards the door.  
 10 Q. All right. Is this perspective, if you were to  
 11 enter the house from the patio in the back, is this kind  
 12 of the first perspective inside the house?  
 13 A. Well, if you went from right to left, yes.  
 14 Q. Okay. 203, what's shown here?  
 15 A. The garage door from the interior of the house to  
 16 the garage, and the left wall of the interior of the  
 17 living room.  
 18 Q. 204, what do we see here?  
 19 A. This would be the entertainment center on the  
 20 left wall and the front door of the residence on the  
 21 opposite wall.  
 22 Q. What is the location of this one, the 205?  
 23 A. That would be the master bedroom. One of the  
 24 drawers on the floor have been pulled out from the  
 25 armoire, cabinet, whichever you prefer to call it.

1 Q. What are we looking at here on 206?  
 2 A. That's the night stand next to the bed in the  
 3 master bedroom.  
 4 Q. 207, Mike, what are we seeing here?  
 5 A. I believe that was back in one of the other  
 6 bedrooms where she had her work materials and her  
 7 computer and so forth.  
 8 Q. Okay. 208, what's shown on this?  
 9 A. That's the wall with the back door and from the  
 10 corner nearest the garage door towards the back door.  
 11 Q. Okay. Thank you. So these photographs, is it  
 12 correct this gives us a little bit of a sense of the  
 13 interior of the house when you -- when you first walked  
 14 in; is that correct?  
 15 A. Yes, it is.  
 16 Q. So you were active in this for an hour, hour and  
 17 a half, two hours until Max Courtney and Brandon Blansit  
 18 arrived from Mansfield; is that correct?  
 19 A. Correct.  
 20 Q. Okay. Now I want to jump ahead just for the  
 21 moment. On July 1st, following the date that the crime  
 22 scene, Nancy Weatherly's house was processed, did you  
 23 meet with Detective Boetcher in Fort Worth?  
 24 A. Yes, I did.  
 25 Q. Where did you go and meet him at?

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1 A. Yes, I have.  
 2 Q. On July 8th, was it taken to Max Courtney's  
 3 location where Max Courtney was for fingerprint  
 4 processing?  
 5 A. Yes, it was.  
 6 Q. Okay. And was it returned to the Johnson County  
 7 Sheriff's Office the very same day, I believe July 8th,  
 8 2010?  
 9 A. Yes, sir.  
 10 Q. Okay. If you would, place it in here.  
 11 A. (Witness complied.)  
 12 MR. CHAMBLESS: I've marked the bag as 209-A  
 13 and the item within the plastic as 209. Offer that at  
 14 this time.  
 15 MR. WESTFALL: No objection to 209 for all  
 16 purposes, and 209-A, I guess for the record, Your Honor.  
 17 THE COURT: 209 and 209-A are admitted.  
 18 (State's Exhibit No. 209 admitted.)  
 19 (State's Exhibit No. 209-A admitted for  
 20 record purposes only.)  
 21 Q. (BY MR. CHAMBLESS) Did you also receive certain  
 22 items from Detective Boetcher on that day?  
 23 A. Yes, sir, I did.  
 24 Q. What were those items?  
 25 A. Two telephones that had been recovered from Jose

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1 A. I met him at the Target at Las Vegas Trail and  
 2 I-30.  
 3 Q. Okay. Did you also meet with Officer --  
 4 Detective Officer Tim Lee at that time?  
 5 A. The first time I met Boetcher was at the Fort  
 6 Worth P.D. impound yard.  
 7 Q. Okay. And did you meet Tim Lee and Boetcher at  
 8 that place?  
 9 A. Yes, I did.  
 10 Q. Did you receive an item from Tim Lee at that  
 11 time?  
 12 A. Yes, I did.  
 13 Q. Okay. Show you this item. I'll represent to you  
 14 it was opened here in court in front of the Jury by  
 15 Officer Lee. Would you look at this, see if you can  
 16 identify this please, sir.  
 17 A. (Witness complied.)  
 18 Q. Do you recognize that item?  
 19 A. Yes, I do.  
 20 Q. And did you take possession of that on July 1st,  
 21 2010?  
 22 A. Yes, I did.  
 23 Q. And did you -- have you retained it within your  
 24 possession or position of Johnson County Sheriff's Office  
 25 since that time?

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1 Ramos.  
 2 Q. Okay. What were the -- what kind of cell phones,  
 3 what brand were they?  
 4 A. One was a Kyocera. And I believe the other one  
 5 was a Nokia.  
 6 Q. Okay. Show you what has markings on it, two  
 7 envelopes. Would you examine those, see if you recognize  
 8 those items, please. Do you recognize these items?  
 9 A. Yes, I do.  
 10 Q. What are they?  
 11 A. The one is a Kyocera phone, one Samsung phone.  
 12 Both those I received from Detective Boetcher that  
 13 morning.  
 14 Q. Did he represent to you that these cell phones  
 15 had been taken from the person of whom?  
 16 A. Jose Ramos.  
 17 Q. Okay. Did you later at a point within the past  
 18 year, did you process these cell phones for fingerprint  
 19 evidence?  
 20 A. Yes, sir, I did.  
 21 Q. What was the result of that?  
 22 A. There were no usable latent prints recovered off  
 23 either.  
 24 Q. However, did you, pursuant to search warrant and  
 25 legal authority, did you obtain some information regarding

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1 the cell phone, the cell phone usage? 65  
 2 A. Yes, sir, we did.  
 3 Q. Tell the Jury about that.  
 4 A. Utilizing a cell phone Cellebrite device, we were  
 5 able to extract the information off the phones, the  
 6 address book, contacts, instant messages, so forth.  
 7 Contained in there was the name of Tat Man, a person of  
 8 interest where stolen property had been released to. And  
 9 I then copied that number and released that phone number  
 10 to Detective Boetcher to see if he can locate that  
 11 individual in Fort Worth.  
 12 Q. Okay. You say Tat Man. What was the full name  
 13 or the legal name of that person?  
 14 A. Robert Lee Hinojosa.  
 15 Q. Okay. Did you meet with that individual?  
 16 A. Yes, I did.  
 17 Q. On July 3rd, 2010, did you meet with  
 18 Mr. Hinojosa, also known as Tat Man?  
 19 A. Yes, I did.  
 20 Q. And did you obtain from him certain items of  
 21 evidence?  
 22 A. Yes, I did.  
 23 Q. On the -- if you would step around and help me  
 24 pull this out.  
 25 A. (Witness complied.)

1 it. Just take a look at these. 67  
 2 A. (Witness complied.)  
 3 Q. All right. Do you recognize the items that you  
 4 have looked at in each of these packages?  
 5 A. Yes, sir, I do.  
 6 Q. And where did you first see them?  
 7 A. Those were provided to me by Mr. Hinojosa.  
 8 Q. Okay. I believe that was on July 3rd, 2010; is  
 9 that correct?  
 10 A. Yes, sir.  
 11 Q. On this one, I believe it's a Hewlett-Packard CD;  
 12 is that correct?  
 13 A. That's correct.  
 14 Q. And this one is marked -- is this your marking  
 15 where it says 11?  
 16 A. Yes, sir, it is.  
 17 Q. On your marking says 10 is also a CD, operating  
 18 system CD; is that correct?  
 19 A. Correct.  
 20 Q. And your marking 9 is a Hewlett-Packard battery;  
 21 is that correct?  
 22 A. Correct.  
 23 Q. Now, at a later time in August of 2011, did you  
 24 process those three items for possible fingerprints?  
 25 A. I did.

1 Q. All right. This item, what is this? 66  
 2 A. This is a LCD TV.  
 3 Q. Okay. And it was -- came into your possession  
 4 through Mr. Hinojosa, also known as Tat Man, July 3rd,  
 5 2010; is that correct?  
 6 A. Yes, it did.  
 7 Q. Now, was this TV taken by Garit Bennett from  
 8 Johnson County to Max Courtney's place of business at  
 9 Mansfield for fingerprint processing, I believe July 8th,  
 10 2010?  
 11 A. Yes, it was.  
 12 Q. Okay. Was it returned back to you, back to the  
 13 Johnson County Sheriff's Department on that same day?  
 14 A. Yes, it was.  
 15 Q. From your memory of the living room of Nancy  
 16 Weatherly's house, was there indications to you that one  
 17 or more TVs had been taken?  
 18 A. Yes, there was.  
 19 Q. And did it -- was the space for the TV in the  
 20 living room, was it similar in size to this particular TV?  
 21 A. Yes, it was.  
 22 Q. Did you also receive other items from  
 23 Mr. Hinojosa that particular day?  
 24 A. Yes, I did.  
 25 Q. Show you what's marked as various markings on

1 Q. And what was the result of that? 68  
 2 A. No usable latent prints were recovered from the  
 3 items.  
 4 Q. Okay. Now with respect to your marking on 7 and  
 5 8, what is in these two packages here?  
 6 A. It's a pair of cell phones, a Nokia cell phone  
 7 and a Motorola cell phone.  
 8 Q. And did you do -- did you find out any  
 9 information about the ownership of these two phones?  
 10 A. Yes, I did. With a search warrant we obtained  
 11 information off of the phones utilizing the Cellebrite  
 12 extraction device. One phone we were able not to obtain  
 13 any information, there was none stored in the memory and  
 14 there was not a SIM chip. And on the other phone, we were  
 15 able to obtain the contact list, conversations, basically  
 16 all the information off the phone.  
 17 Q. And what did that information link to, if  
 18 anything?  
 19 A. That information linked back to a phone number  
 20 that says "my desk" on the phone. I contacted the  
 21 number. It was a phone number based at Lockheed. I  
 22 called, spoke to her supervisor. He advised that it was  
 23 Ms. Weatherly's phone. And then I contacted Industrial  
 24 Security and notified them that I had the phone.  
 25 Q. Okay. Now which phone was that? Do you recall

1 which one this was?

2 A. I believe it was the Motorola.

3 Q. Okay. And so this cell phone, which through this  
4 process was linked to Nancy Weatherly, is marked as your  
5 Exhibit 8; is that correct?

6 A. Yes.

7 MR. CHAMBLESS: Okay. I've marked the  
8 envelope as 210-A, the cell phone as 210.

9 MR. WESTFALL: No objection as offered, Your  
10 Honor.

11 THE COURT: Admitted.

12 MR. CHAMBLESS: Offer 210 for all purposes,  
13 210-A for record.

14 THE COURT: Admitted.

15 (State's Exhibit No. 210 admitted.)

16 (State's Exhibit No. 210-A admitted for  
17 record purposes only.)

18 Q. (BY MR. CHAMBLESS) Also, did you process  
19 both cell phones for possible fingerprints at a later  
20 time?

21 A. I did.

22 Q. What was the result of that?

23 A. There was no usable latents recovered off either  
24 phone.

25 Q. Okay. On July 9th of 2010, did you obtain a

70 1 search warrant for shoes of a certain person?

2 A. I did.

3 Q. And tell us about that and what you did in that  
4 regard.

5 A. I was requested to obtain the shoes of Jose  
6 Ramos, at which time I sent Detective Bennett to Tarrant  
7 County to verify that they were available. We then  
8 generated search warrant, and I personally went to Tarrant  
9 County jail and met with Lieutenant Skidmore and presented  
10 him with a copy of the search warrant and obtained the  
11 shoes.

12 Q. Okay. And whose shoes were you seeking?

13 A. Jose Ramos.

14 Q. Okay. Show you this package, and ask you if  
15 you can take a look at that and see if you can identify  
16 that.

17 A. (Witness complied.)

18 Q. And what's contained within this package?

19 A. A pair of sneakers.

20 Q. Is that what you obtained from Lieutenant or  
21 Officer Skidmore at Tarrant County on the July, I believe,  
22 9th of 2010?

23 A. It is.

24 Q. Okay. Would you remove those, please.

25 A. (Witness complied.)

1 MR. CHAMBLESS: Marked the packaging as  
2 211-A and the shoes of Jose Ramos as 211.

3 MR. WESTFALL: And A is for the record?

4 MR. CHAMBLESS: Yes.

5 MR. WESTFALL: No objection as offered.

6 THE COURT: Admitted.

7 (State's Exhibit No. 211 admitted.)

8 (State's Exhibit No. 211-A admitted for  
9 record purposes only.)

10 Q. (BY MR. CHAMBLESS) All right. On September 13th  
11 of 2010, did you transport two evidentiary items to  
12 Jennifer Nollkamper?

13 A. I did.

14 Q. I believe we've already offered the document  
15 showing that you did that, but would you just look for  
16 this moment at these two. They're marked BRB-01 and 16.  
17 And do not open them at this time, but are those the items  
18 that you took?

19 A. Yes, sir, they are.

20 Q. All right. Where did you take them from?

21 A. I recovered them from my evidence room, and they  
22 were transported to the Fort Worth P.D. Crime Lab.

23 Q. And did you personally release them to Jennifer  
24 Nollkamper at that location?

25 A. Yes, I did.

72 1 Q. At a later point on March 2nd, 2011, did you,  
2 pursuant to legal authority, obtain saliva samples of Mark  
3 Soliz and Jose Ramos?

4 A. I did.

5 Q. Okay. How did you -- tell us how you -- how  
6 that's done.

7 A. Basically they're known as a buccal swab. I  
8 obtained two sterile swabs still in their container,  
9 sealed, then proceeded to Blue West where the two inmates  
10 were being detained at that time, advised them of my  
11 purpose for being there, removed the sterile swabs from  
12 their container, then swabbed the interior of their cheek  
13 and gums and placed the swabs inside a sterile, white,  
14 plain white box container and sealed it.

15 Q. Okay. I want to show you what's marked, I guess  
16 by your number 17 and 18, and ask you if you recognize  
17 those items?

18 A. Yes, sir. Those will be the -- those will be the  
19 buccal swabs that I obtained from both of them.

20 Q. Would you open those, please.

21 A. (Witness complied.)

22 Q. All right. First one, your package marked 17, is  
23 the buccal swab contained within that?

24 A. Yes, it is.

25 Q. Would you remove that, please.

1 A. (Witness complied.)  
 2 Q. And the swab itself has the name "Mark Soliz" and  
 3 the date, I guess, that you took it?  
 4 A. Yes, the time and my initials also.  
 5 MR. CHAMBLESS: Okay. At this time I would  
 6 offer State's 212 being the buccal swab, 212-A being the  
 7 packaging.  
 8 MR. HEISKELL: No objection, Your Honor,  
 9 212-A for record only, and 212 for all purposes.  
 10 THE COURT: Admitted.  
 11 (State's Exhibit No. 212 admitted.)  
 12 (State's Exhibit No. 212-A admitted for  
 13 record purposes only.)  
 14 Q. (BY MR. CHAMBLESS) Would you look in the  
 15 package marked 18. You have already done that. Is  
 16 that the buccal swab of Jose Clemente Ramos?  
 17 A. Yes, it is.  
 18 MR. CHAMBLESS: If you would, go ahead and  
 19 place it in there.  
 20 Offer at this time 213-A, record purposes,  
 21 213 being buccal swab of Jose Ramos.  
 22 MR. HEISKELL: No objection, Your Honor.  
 23 THE COURT: Admitted.  
 24 (State's Exhibit No. 213 admitted.)  
 25 (State's Exhibit No. 213-A admitted for

73  
 1 record purposes only.)  
 2 Q. (BY MR. CHAMBLESS) Was there a vehicle  
 3 recovered from Fort Worth, Texas by the Johnson County  
 4 Sheriff's Department?  
 5 A. Yes, there was.  
 6 Q. Was that a 2003 Tundra pickup owned by Nancy  
 7 Weatherly?  
 8 A. Yes, it was.  
 9 Q. Who was dispatched to escort the Tundra from Fort  
 10 Worth to Cleburne?  
 11 A. Detective Terry Dalton and Detective J. Kniffen.  
 12 Q. Okay. And in the course of that, did Detective  
 13 Kniffen submit a beer can and beer bottle into evidence at  
 14 the Johnson County Sheriff's Department?  
 15 A. Yes, he did.  
 16 Q. All right. I want to show you this item and ask  
 17 you if you would examine that and see what's contained in  
 18 that package.  
 19 A. (Witness complied.)  
 20 Q. And from what location in the Tundra were these  
 21 items taken?  
 22 A. They were located in the bed of the Tundra.  
 23 Q. Okay. They were located in the bed of the Tundra  
 24 pickup and removed by Officer Kniffen before the Tundra  
 25 was driven to Cleburne; is that correct?

75  
 1 A. Yes.  
 2 Q. If you could --  
 3 MR. CHAMBLESS: At this time, offer the beer  
 4 can and beer bottle as 214, the packaging as 214-A.  
 5 MR. WESTFALL: Your Honor, may I take the  
 6 witness on voir dire just for one second?  
 7 THE COURT: Yes, sir.  
 8 VOIR DIRE EXAMINATION  
 9 BY MR. WESTFALL:  
 10 Q. Lieutenant, when these were collected, they were  
 11 given separate, separate item numbers evidence-wise,  
 12 weren't they?  
 13 A. Yes, they were.  
 14 Q. Were the items 15 and 16?  
 15 A. They were.  
 16 Q. And it does not appear that they're marked in any  
 17 way on the -- for the number of the evidence item on the  
 18 bottle and can.  
 19 A. First time I've seen them outside of the bag;  
 20 sir.  
 21 MR. WESTFALL: Okay. Thank you.  
 22 Your Honor, we would ask that these be at  
 23 least made two separate exhibits just for the record  
 24 because it is confusing. They're not marked in any way as  
 25 evidentiary items and there's no way to separate them out

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 1 for future witnesses.  
 2 DIRECT EXAMINATION (Continued)  
 3 BY MR. CHAMBLESS:  
 4 Q. Do you have records that indicate which exhibit  
 5 is which, number-wise?  
 6 A. Yes, sir.  
 7 Q. All right. And what is that?  
 8 A. The Bud Light beer can is 15, and the beer bottle  
 9 is 16.  
 10 Q. Okay. If you would remove one of the items,  
 11 please.  
 12 A. (Witness complied.)  
 13 MR. CHAMBLESS: We've marked the beer can as  
 14 214-15, the beer bottle as 214-16, and then the original  
 15 packaging as 214-A.  
 16 MR. WESTFALL: Your Honor, may I just have  
 17 one moment.  
 18 No objection as offered.  
 19 THE COURT: Thank you. Admitted.  
 20 (State's Exhibit No. 214-15 admitted.)  
 21 (State's Exhibit No. 214-16 admitted.)  
 22 (State's Exhibit No. 214-A admitted for  
 23 record purposes only.)  
 24 Q. (BY MR. CHAMBLESS) Did you also -- after  
 25 Detective Blansit and Max Courtney finished their crime

1 scene processing, under your direction was a Wells Fargo  
 2 checkbook removed from the Nancy Weatherly house?  
 3 A. Yes, it was.  
 4 Q. And would you please examine what's marked on  
 5 your records as No. 2 item.  
 6 A. (Witness complied.)  
 7 Q. What is No. 2?  
 8 A. It is two checkbooks.  
 9 Q. Okay. Did you process those checkbooks at a  
 10 later time for possible fingerprint evidence?  
 11 A. Yes, I did.  
 12 Q. What was the result of your processing?  
 13 A. There was no usable latent prints recovered.  
 14 Q. On August 22nd of 2011, did you take certain  
 15 items to the -- of latent print evidence to the Tarrant  
 16 County Medical Examiner's office?  
 17 A. I did.  
 18 Q. Okay. If you would, take a look at the -- this  
 19 package, which I believe you've opened this morning with  
 20 me; is that correct?  
 21 A. Yes, sir.  
 22 Q. All right. Take a look and tell us what's in  
 23 there.  
 24 A. These are latent prints that were recovered off  
 25 the vehicle and at the crime scene. And there is also --

1 Gaudet read into the record.  
 2 MR. WESTFALL: Your Honor, agreed, and no  
 3 objection as offered.  
 4 THE COURT: Admitted.  
 5 (State's Exhibit No. 215 admitted.)  
 6 (State's Exhibit No. 215-A admitted for  
 7 record purposes only.)  
 8 Q. (BY MR. CHAMBLESS) One of the first things  
 9 the -- what was, I guess, the very first thing that you  
 10 did when you arrived at Nancy Weatherly's house?  
 11 A. After signing in to the crime scene, I initiated  
 12 a crime scene video.  
 13 Q. Okay. Did you operate that equipment yourself?  
 14 A. I did.  
 15 Q. What do you do that -- what's the purpose of  
 16 doing that?  
 17 A. To document the scene as is, make sure that we  
 18 have the proper colors, make sure that if there's any  
 19 sound in the house, that it's on audio on the video.  
 20 Q. Okay. Did you begin the videotape outside the  
 21 house?  
 22 A. Started at the front gate.  
 23 Q. Okay. And was there any -- any envelopes, any  
 24 mail in the -- at the front gate?  
 25 A. Yes, there was.

1 Q. We've taken the major case prints out.  
 2 A. All right. This contains strictly latent print  
 3 cards taken from the vehicle and from the crime scene.  
 4 Q. All right. And on the date that you took them,  
 5 did you place them within that envelope that you're  
 6 holding?  
 7 A. Yes.  
 8 Q. Okay. And how many latent prints were taken by  
 9 you to Tarrant County Medical Examiner's office on August  
 10 22nd, 2011?  
 11 A. 10.  
 12 Q. And for the record, would you read those, just  
 13 which ones were taken.  
 14 A. BRB-11, BRB-21, BRB-22, BRB-23, BMC-01, BMC-02,  
 15 BMC-18, BMC-36, BMC-37-A, BMC-37-B.  
 16 Q. Okay. And are all those prints that you've just  
 17 spoken of, are they here contained within that envelope?  
 18 A. Yes, sir, they are.  
 19 Q. All right. If you would place them here within  
 20 this plastic bag, please.  
 21 A. (Witness complied.)  
 22 (Sotto voce discussion.)  
 23 MR. CHAMBLESS: Offer the packaging as 215-A,  
 24 and the prints themselves collectively as 215. Each print  
 25 is marked, I'll represent, in the manner that Officer

1 Q. All right. And did you photograph that as well?  
 2 A. Yes, sir, I did.  
 3 Q. What's your reason for doing that?  
 4 A. Normally we open the mailbox and we photograph  
 5 what's in the mailbox to ensure that we're -- same people  
 6 belong to that residence.  
 7 Q. Trying to identify the owner or the resident of  
 8 the house; is that correct?  
 9 A. Or possible suspects that live at the residence.  
 10 Q. Okay. And did you continue the videotape  
 11 throughout the house?  
 12 A. Yes, I did.  
 13 Q. Did you go into each room and look at it from  
 14 different perspectives?  
 15 A. Yes, I did.  
 16 Q. This was the, I guess, earliest documentation  
 17 visually of Nancy Weatherly's house by law enforcement; is  
 18 that correct?  
 19 A. It is.  
 20 Q. The videotape is approximately how long?  
 21 A. I have no idea. It's probably 15, 20 minutes.  
 22 Q. Okay. That location, 14356 FM 2331, it's in  
 23 Godley, Texas; is that correct?  
 24 A. Yes, it is.  
 25 Q. And, Officer Gaudet, is that in Johnson County,

1 Texas?  
 2 A. Yes, it is.  
 3 Q. Okay. I'm going to show you what's marked as  
 4 State's Exhibit No. 188. Ask you if you recognize this  
 5 item?  
 6 A. Yes, sir, I do.  
 7 Q. What is State's Exhibit No. 188?  
 8 A. This is a DVD with my crime scene video on it.  
 9 Q. Okay. And -- okay. Does this fairly and  
 10 accurately show the condition of the Nancy Weatherly house  
 11 and of Nancy Weatherly when you first got there?  
 12 A. It does.  
 13 MR. CHAMBLESS: Offer 188 at this time.  
 14 MR. WESTFALL: Your Honor, no further  
 15 objections to 188.  
 16 THE COURT: Can I see both up here for a  
 17 question about that.  
 18 (At the bench.)  
 19 THE COURT: We have an agreement to play it  
 20 without the audio, and the officer testified that he  
 21 videoed it with the sound on to capture the sounds in the  
 22 house, so I don't want to leave anybody with the wrong  
 23 impression on that.  
 24 MR. CHAMBLESS: I did hear that, except I  
 25 could see -- but there was nothing effectively captured

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1 THE COURT: We'll recess for lunch. Be back  
 2 at 1:15.  
 3 (Recess taken from 11:53 a.m. to 1:22 p.m.)  
 4 (Jury not present.)  
 5 THE COURT: State present and ready?  
 6 MR. CHAMBLESS: Yes, Your Honor.  
 7 THE COURT: Defense present and ready?  
 8 MR. WESTFALL: Yes, Your Honor.  
 9 THE COURT: Defendant present?  
 10 MR. WESTFALL: He is.  
 11 THE COURT: Jury ready? If they are ready,  
 12 please bring them in.  
 13 (Jury present.)  
 14 THE COURT: Thank you. You may be seated.  
 15 Q. (BY MR. CHAMBLESS) Detective Gaudet, to go back,  
 16 you arrived at the Nancy Weatherly house at approximately  
 17 9 a.m. on June 30th; is that correct?  
 18 A. Correct.  
 19 Q. And approximately 10:30 or thereabouts, Max  
 20 Courtney and Detective Blansit arrived and, I guess, took  
 21 over the crime scene; is that where we were?  
 22 A. Yes, sir.  
 23 Q. Okay. This morning we looked at several pieces  
 24 of evidence. For example, 2 and 3, yours marked 2 and  
 25 yours marked 3, what are those, according to your list?

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1 sound-wise.  
 2 MR. WESTFALL: Right, nothing, just  
 3 background voices.  
 4 THE COURT: Just ask him that question.  
 5 (In open court.)  
 6 THE COURT: 188 is admitted.  
 7 (State's Exhibit No. 188 admitted.)  
 8 MR. CHAMBLESS: All right. Thank you, Judge.  
 9 Q. (BY MR. CHAMBLESS) Detective, is there -- was  
 10 there anything -- you said the sound was on for what  
 11 reason?  
 12 A. Just to document the sounds that are within the  
 13 house, like if they had their radio going or TV turned on,  
 14 things of that nature.  
 15 Q. Was there anything evidentiary-wise that was  
 16 effectively captured by sound-wise on your video?  
 17 A. No, there was not.  
 18 MR. CHAMBLESS: Okay. Judge, I would like  
 19 permission to play State's Exhibit No. 188, if I might.  
 20 THE COURT: Granted.  
 21 (Off-the-record discussion.)  
 22 (State's Exhibit No. 188, DVD with no audio,  
 23 played in open court.)  
 24 THE COURT: Is that the end of the video?  
 25 MR. CHAMBLESS: It is, Your Honor.

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1 A. 2 are two checkbooks from Wells Fargo, and No. 3  
 2 is a Kyocera Domino red phone.  
 3 Q. Okay. What is 4?  
 4 A. 4 is a Samsung phone, red in color.  
 5 Q. Okay. Now, is this correct, you processed all of  
 6 these items, the checkbook and two cell phones for  
 7 possible fingerprint evidence; is that correct?  
 8 A. Yes, it is.  
 9 Q. And the result was a negative result?  
 10 A. Correct.  
 11 MR. CHAMBLESS: All right. Offer the  
 12 checkbook as item 216, and packaging as 216-A for record  
 13 purposes.  
 14 MR. WESTFALL: No objection, Your Honor.  
 15 THE COURT: Admitted.  
 16 (State's Exhibit No. 216 admitted.)  
 17 (State's Exhibit No. 216-A admitted for  
 18 record purposes only.)  
 19 MR. CHAMBLESS: Offer the Kyocera cell phone  
 20 as 217, packaging as 217-A.  
 21 MR. WESTFALL: No objection.  
 22 THE COURT: Admitted.  
 23 (State's Exhibit No. 217 admitted.)  
 24 (State's Exhibit No. 217-A admitted for  
 25 record purposes only.)

1 MR. CHAMBLESS: And offer the Metro PCS cell  
 2 phone as 218, and the packaging as 218-A -- Samsung.  
 3 Sorry.

4 MR. WESTFALL: Okay. No objection, Your  
 5 Honor, to Exhibit 218 for all purposes, and 218-A for the  
 6 record.

7 THE COURT: Admitted.

8 (State's Exhibit No. 218 admitted.)

9 (State's Exhibit No. 218-A admitted for  
 10 record purposes only.)

11 Q. (BY MR. CHAMBLESS) Your exhibit marked No. 7,  
 12 what is that?

13 A. It's a Nokia cell phone.

14 Q. Okay. And we looked at that this morning. You  
 15 processed as well for fingerprints; is that correct?

16 A. Yes, sir, it is.

17 Q. Tell the Jury, basically how do you do that?

18 A. Depending on the shape and texture of the item to  
 19 be fingerprinted, you can either do a physical process or  
 20 a chemical process.

21 Chemical process is where you treat the  
 22 exterior of the item with different chemicals that will  
 23 adhere to it, to the fats, amino acids, and salts and  
 24 solids that are in a fingerprint. Use DFO, anhydride,  
 25 several other chemicals.

1 Or you can do a physical process where you  
 2 literally do what's called cyanoacrylate ester fuming,  
 3 commonly known as super glue, place it into a chamber,  
 4 super glue it, determine whether there's any prints on it  
 5 or not. Then using a physical process, you use a black  
 6 graphite dust and fingerprint brush, dust the print  
 7 itself, and then lift it with fingerprint tape.

8 Q. Okay. In the case of items, your item 7 and your  
 9 item 9, what was the result of your processing?

10 A. It was negative for usable latent prints.

11 MR. CHAMBLESS: Okay. Offer item 219, being  
 12 the Nokia cell phone marked as 219, packaging as 219-A.

13 MR. WESTFALL: No objection as offered.

14 THE COURT: Admitted.

15 (State's Exhibit No. 219 admitted.)

16 (State's Exhibit No. 219-A admitted for  
 17 record purposes only.)

18 MR. CHAMBLESS: Offer State's Exhibit No.  
 19 220 being the Hewlett-Packard battery, packaging is 220-A.

20 MR. WESTFALL: No objection as offered.

21 THE COURT: Admitted.

22 (State's Exhibit No. 220 admitted.)

23 (State's Exhibit No. 220-A admitted for  
 24 record purposes only.)

25 Q. (BY MR. CHAMBLESS) These items marked by your

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1 packaging as item 10 and 11, which items are they?  
 2 A. 10 is a "Operating System CD" disk, and 11 is a  
 3 "hp quickrestore" operating systems disk.

4 Q. Did you also process these items for possible  
 5 fingerprints?

6 A. I did.

7 Q. What was the result?

8 A. Negative usable latent prints.

9 MR. CHAMBLESS: Okay. Offer the operating  
 10 system CD as 221, the packaging as 221-A.

11 MR. WESTFALL: No objection as offered, Your  
 12 Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 221 admitted.)

15 (State's Exhibit No. 221-A admitted for  
 16 record purposes only.)

17 MR. CHAMBLESS: Offer the Hewlett-Packard  
 18 quickrestore system recovery CD as 222, and packaging as  
 19 222-A.

20 MR. WESTFALL: No objection as offered.

21 THE COURT: Admitted.

22 (State's Exhibit No. 222 admitted.)

23 (State's Exhibit No. 222-A admitted for  
 24 record purposes only.)

25 Q. (BY MR. CHAMBLESS) Earlier this morning you

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1 indicated this television that you recovered from  
 2 Mr. Hinojosa. Do you recall the date that you did that?

3 A. Not really.

4 Q. Would that have been on July 3rd of 2010?

5 A. Yes, sir.

6 MR. CHAMBLESS: Okay. It's been marked now  
 7 as item No. 223, and would offer the television recovered  
 8 from Hinojosa as item 223.

9 MR. WESTFALL: No objection, Your Honor.

10 THE COURT: Admitted.

11 (State's Exhibit No. 223 admitted.)

12 Q. (BY MR. CHAMBLESS) Now, following -- the point  
 13 at which Garit Bennett recovered all of the items  
 14 processed from the Nancy Weatherly house were retrieved  
 15 and taken by Garit Bennett to Johnson County Sheriff's  
 16 Department; is that correct?

17 A. Yes, they were.

18 Q. Okay. And during the time that those items were  
 19 at the Sheriff's Department, did you evaluate certain of  
 20 those items at our request for possible fingerprint  
 21 evidence?

22 A. Yes, I did.

23 Q. Okay. Now, just for the record, some of these,  
 24 the ones from the Nancy Weatherly house, have the  
 25 beginning letters BRB; is that correct?

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1 A. Yes.  
 2 Q. And the ones -- items of evidence taken from the  
 3 Tundra begin with BMC; is that correct?  
 4 A. Correct.  
 5 Q. Okay. Did you process on July 28th, 2011, BMC  
 6 item 15, a keyless entry device?  
 7 A. I did.  
 8 Q. What was the result of that?  
 9 A. Negative usable latent prints.  
 10 Q. Okay. Did you process on the same date BMC-17, a  
 11 Dairy Queen sack on that date?  
 12 A. I did.  
 13 Q. What was the result?  
 14 A. Negative usable latent prints.  
 15 Q. Okay. On July 28th, 2011, did you process  
 16 BMC-22, a cellular phone plastic holder?  
 17 A. I did.  
 18 Q. And what was the result of that?  
 19 A. Negative usable latent prints.  
 20 Q. Okay. Also from the Tundra, BMC-9, a earring,  
 21 did you process that on August 24th, 2011?  
 22 A. I did.  
 23 Q. What was the result?  
 24 A. No usable latent prints.  
 25 Q. On August 24th, 2011, did you process BRB-20,

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1 A. Yes, sir.  
 2 MR. CHAMBLESS: We would offer the contents  
 3 of BRB-16 being a bullet, portion of a bullet, and the  
 4 contents of BRB-01, a shell casing, both of which I'll  
 5 represent were recovered from the home of Nancy Weatherly.  
 6 MR. WESTFALL: Your Honor, no objection.  
 7 THE COURT: How are those marked? What are  
 8 the markings on the -- the evidence and markers?  
 9 MR. CHAMBLESS: The 225 would be the bullet  
 10 fragment. 224 will be the shell casing, casing cartridge.  
 11 THE COURT: 225 and 224 are admitted.  
 12 (State's Exhibit Nos. 224 - 225 admitted.)  
 13 MR. CHAMBLESS: Yes, sir. Thank you. Pass  
 14 the witness.  
 15 CROSS-EXAMINATION  
 16 BY MR. WESTFALL:  
 17 Q. Hello, Lieutenant Gaudet.  
 18 A. Morning.  
 19 MR. WESTFALL: Your Honor, may I move this  
 20 just out of view?  
 21 THE COURT: Yes, sir.  
 22 MR. WESTFALL: What I want is that list of  
 23 the evidence.  
 24 Q. Okay. So this State's Exhibit No. 189, that's in  
 25 evidence already. This is the chain of custody. I'm just

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1 pills and pill bottles?  
 2 A. I did.  
 3 Q. And what was the result on that date?  
 4 A. No usable latent prints.  
 5 Q. All right. You testified that you transported  
 6 BRB-01 and BRB-16 on September 13th of 2010 to Jennifer  
 7 Nollkamper; is that correct?  
 8 A. Yes, sir.  
 9 Q. All right. Ask if you would, if you would be  
 10 kind enough to open those packages, please.  
 11 A. (Witness complied.)  
 12 Q. Okay. If you would, place the contents of BRB-01  
 13 in -- in this.  
 14 A. (Witness complied.)  
 15 Q. Okay. We've marked the contents of BRB-01 in to  
 16 an envelope now marked 224; is that correct?  
 17 A. Yes, sir.  
 18 Q. And the packaging being 224-A?  
 19 A. Correct.  
 20 Q. And that corresponds to BRB-01?  
 21 A. Yes, sir.  
 22 Q. Okay. Have we now placed the contents of BRB-16  
 23 into a package marked State's Exhibit No. 225?  
 24 A. Yes, sir.  
 25 Q. And the packaging now marked 225-A?

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1 going to put this on the overhead. Now BRB is -- is that  
 2 Brandon Blansit?  
 3 A. Yes, sir.  
 4 Q. And he was one of the Crime Scene officers that  
 5 came from Mansfield?  
 6 A. Mansfield, yes, sir.  
 7 Q. And BMC is, I think Byron? We all know him as  
 8 Max Courtney?  
 9 A. Yes, sir.  
 10 Q. And he's from?  
 11 A. Mansfield P.D.  
 12 Q. Mansfield also. They came together and worked  
 13 the scene after y'all had been there for a little bit. I  
 14 guess they showed up around 10?  
 15 A. Around then.  
 16 Q. And then these 15, 16, 17, 18, when you sent  
 17 Detective Kniffen and --  
 18 A. Dalton.  
 19 Q. -- Dalton up to Fort Worth to, you know, one of  
 20 the things they did was retrieve the truck or secured the  
 21 truck. These items were in the truck, the Tundra that was  
 22 taken from Nancy Weatherly's house?  
 23 A. Those were in the bed of the truck.  
 24 Q. And two of these items are on the list, they're  
 25 15 and 16, right?

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1 A. Yes, sir. 93  
 2 Q. And it's beer can, and what's the letters next to  
 3 it?  
 4 A. DNA.  
 5 Q. Does that mean that some DNA testing was going to  
 6 take place or did take place?  
 7 A. That was the request.  
 8 Q. That was the request. Okay. And 16 is beer  
 9 bottle and requested for DNA?  
 10 A. Yes.  
 11 Q. The beer can is 214-15 and the beer bottle is  
 12 214-16?  
 13 A. Yes, sir.  
 14 (Pause in proceeding.)  
 15 (Sotto voce discussion.)  
 16 MR. WESTFALL: I'm going to have to open up  
 17 State's Exhibit No. 215.  
 18 (Sotto voce discussion.)  
 19 Q. This is kind of what your fingerprints look like  
 20 when they get sent to the lab, right?  
 21 A. Yes, sir, that's one form.  
 22 Q. And this is a piece of tape?  
 23 A. Yes, sir, it is.  
 24 Q. And it was used to lift the powder that you had  
 25 applied to get the print; is that right?

1 Q. Driver side door. Okay. Also in here, I guess 95  
 2 in one of these envelopes is a BRB-23, right?  
 3 A. Correct.  
 4 Q. It's not on here, but BRB-23, do you remember  
 5 that as being a fingerprint from a cassette box that was  
 6 taken inside of Nancy Weatherly's house?  
 7 A. Yeah, I believe so.  
 8 Q. Thank you. Another thing that you did some work  
 9 on was this Samsung phone, right?  
 10 A. Yes, sir.  
 11 Q. It's a little red -- here. This is the phone  
 12 that Detective Boetcher took from Jose Ramos --  
 13 A. Yes, sir.  
 14 Q. -- when he was arrested? And you actually did  
 15 some forensics on this. You can go in with some software  
 16 and pull all the information out of it?  
 17 A. I personally did not. I have a individual at my  
 18 office certified to use Cellebrite, and he performed the  
 19 examination.  
 20 Q. He did that under your supervision. I guess  
 21 you're the one that had it done?  
 22 A. Yes, sir.  
 23 Q. And there were phone numbers extracted?  
 24 A. Yes, sir.  
 25 Q. What was this exhibit called? Not the State's

1 A. I didn't specifically do it, but that's how it's 94  
 2 done, yes.  
 3 Q. Oh, okay. Well, I mean, just generally so the  
 4 Jury can understand how a fingerprint is lifted.  
 5 A. A fingerprint is generally lifted utilizing the  
 6 adhesive side of a clear, clear acetate or clear tape.  
 7 Q. And then this -- if I can get it in focus. Does  
 8 that appear to be in focus?  
 9 A. Pretty close.  
 10 Q. Okay. And this thing here, this sort of circle,  
 11 that's going to be the print that ultimately gets looked  
 12 at?  
 13 A. That is correct.  
 14 Q. And as it stands right here, would you call this  
 15 a latent print?  
 16 A. Yes.  
 17 Q. And this particular print was taken from the  
 18 driver's side door of something; that's what it purports  
 19 to be?  
 20 A. Correct.  
 21 Q. Do you know that this was Nancy Weatherly's  
 22 truck?  
 23 A. The BMCs were taken from the Tundra, yes.  
 24 Q. Okay. And that's BMC-18?  
 25 A. Yes, sir.

1 Exhibit. What was it called when it came to -- 96  
 2 A. My Exhibit No. 4.  
 3 Q. 4. It's recognizable; I guess it was analyzed  
 4 under the name Samsung phone, right?  
 5 A. I would have to look at the actual document.  
 6 Q. Okay. We'll say 4, Samsung phone from Joe  
 7 Ramos. And inside that phone was a phone number for a guy  
 8 name Tat Man that you called?  
 9 A. I did not call Tat Man.  
 10 Q. You did not call Tat Man. Somebody called Tat  
 11 Man though, right?  
 12 A. Detective Boetcher.  
 13 Q. Okay. And this number though came out of that  
 14 phone, right?  
 15 A. I believe so.  
 16 Q. That phone. And, I mean, I don't want you to go  
 17 on memory here. I have the report. That's the report  
 18 that came from the forensic analysis of the phone, right?  
 19 A. Yes, sir, it is.  
 20 Q. What are you looking for?  
 21 A. Tat Man.  
 22 Q. Oh, I've got it marked. The phone numbers are in  
 23 front. Does this refresh your memory as to whether Tat  
 24 Man's number is in the phone?  
 25 A. Yes, sir.

1 Q. Okay. And there's also a number for a Whitney in  
2 the phone, right?  
3 A. Yes, sir.  
4 Q. Tat Man told them to check this. His phone  
5 number is 817. And Whitney, 817-995-0959. Am I correct  
6 on that?  
7 A. Yes, sir.  
8 Q. And Tat Man, through your own personal  
9 investigation you know is -- what's his name?  
10 A. Robert Lee Hinojosa.  
11 Q. Robert Lee.  
12 A. I believe it's H-I-N-J-O-S-A.  
13 Q. Okay. Do you recognize this guy?  
14 A. Yes, sir.  
15 Q. Jose Clemente Ramos?  
16 A. Yes.  
17 Q. And those are the shoes he was wearing?  
18 A. Appears so.  
19 Q. Appear to be the same shoes that you collected,  
20 right?  
21 A. Yes, sir.  
22 Q. You see the tread pattern?  
23 A. Yes, sir.  
24 Q. Let me ask you this. Are you aware that Max  
25 Courtney developed a electrostatic print of a -- of a

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1 THE COURT: Please raise your right hand.  
2 (Witness sworn.)  
3 THE COURT: Thank you.  
4 JENNIFER NOLLKAMPER,  
5 Having been first duly sworn, testified as follows:  
6 DIRECT EXAMINATION  
7 BY MR. STRAHAN:  
8 Q. Would you state your name, please.  
9 A. Jennifer Marie Nollkamper.  
10 Q. And how are you employed?  
11 A. I'm a Senior Forensic Scientist with the Fort  
12 Worth Police Department Crime Laboratory.  
13 Q. Okay. I'm sorry, I can barely hear you. Can you  
14 pull that microphone a little bit, please.  
15 A. I'm a Senior Forensic Scientist with the Fort  
16 Worth Police Department Crime Laboratory.  
17 Q. And how long have you held that position?  
18 A. I've been with the Crime Lab for almost five  
19 years.  
20 Q. And specifically what kind of work do you do  
21 there in the Crime Lab?  
22 A. I'm a firearms examiner.  
23 Q. Okay. And is there a field of scientific  
24 analysis or study that has to do with firearm and tool  
25 mark analysis?

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1 footprint impression on newspaper on the scene?  
2 A. Yes, sir, I am.  
3 Q. Are you also aware that Max Courtney discovered a  
4 footwear impression on the driver side step on Nancy  
5 Weatherly's pickup truck?  
6 A. Yes, sir.  
7 Q. And there was a footwear impression on the other  
8 side of Nancy Weatherly's truck that was examined and  
9 evaluated as well on the passenger side. Did you know  
10 that?  
11 A. No, sir.  
12 MR. WESTFALL: Okay. Okay. Give me just one  
13 second. Okay.  
14 Your Honor, I'll pass the witness.  
15 Thank you, Lieutenant.  
16 MR. CHAMBLESS: Nothing further. Thank you,  
17 Detective.  
18 THE COURT: May the witness be excused?  
19 MR. WESTFALL: He may.  
20 (Witness excused.)  
21 MR. STRAHAN: State would call Jennifer  
22 Nollkamper.  
23 (Pause in proceeding.)  
24 MR. STRAHAN: She hasn't been sworn, Your  
25 Honor.

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1 A. Yes, there is.  
2 Q. Could you please tell us basically what's  
3 involved in that field of study.  
4 A. Firearm analysis is basically the study of  
5 identifying cartridge cases and/or bullets or other  
6 ammunition components to firearms which they were fired  
7 from.  
8 Q. Okay. And you -- have you ever testified as an  
9 expert regarding firearm analysis?  
10 A. Yes, I have.  
11 Q. Okay. And how many times have you testified as  
12 an expert?  
13 A. Approximately seven.  
14 Q. What is your educational background and your work  
15 experience that qualifies you as an expert in firearms  
16 analysis?  
17 A. I have a Bachelors of Science degree in  
18 Microbiology from Montana State University. I have a  
19 Masters of Science degree in Forensic Science with a  
20 concentration in criminalistics and advanced investigation  
21 from the University of New Haven in New Haven,  
22 Connecticut. I have completed a two-year training program  
23 which is modeled after the Association of Firearms and  
24 Tool Mark Examiners training manual. This training  
25 program included both practical and written exercises and

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1 testing in the area of firearms and tool marks. I have  
 2 also attended a number of conferences, workshops and  
 3 manufacturers' armors courses dealing with specific  
 4 firearms.

5 Q. Okay. And you have testified in courtrooms in  
 6 the State of Texas as an expert in this field; is that  
 7 correct?

8 A. Yes, I have.

9 Q. Okay. Now, what exactly does a firearm examiner  
 10 do?

11 A. I will examine the firearms evidence using  
 12 various equipment, a compound microscope, and I will look  
 13 at that and determine if that ammunition, items of  
 14 ammunition were fired from that particular weapon.

15 Q. Okay. Well, let's talk about weapons, first of  
 16 all. How is it possible; something has got to get you all  
 17 the way to the microscope. In other words, what happens,  
 18 how exactly does a firearm work?

19 A. A firearm, the definition of a firearm is a  
 20 mechanical device which propels a projectile using the  
 21 forces of combustion. When a firearm is manufactured,  
 22 there are a number of marks that are placed on the metal  
 23 during the manufacturing process. Those marks will impart  
 24 a unique and random set of individual marks onto those --  
 25 onto the bullet or the cartridge case. I can then compare

102 1 test fires from the weapon to the evidence items and  
 2 determine if they were or were not fired from that weapon  
 3 using those unique marks.

4 Q. Okay. And if -- so that I understand, if we're  
 5 talking about a handgun with a -- with a hammer, and the  
 6 hammer would hit a firing pin which hits the shell casing,  
 7 and that explosion occurs forcing a bullet through the  
 8 barrel; is that fair to say?

9 A. That's correct.

10 Q. And when that pin is -- is made of metal; is that  
 11 right?

12 A. Usually, yes.

13 Q. A metal pin hits the back of the shell.

14 That's -- I mean, it's metal coming in contact with metal  
 15 pretty hard; is that right?

16 A. Correct.

17 Q. Crushing the primer causing combustion and the  
 18 explosion propelling the bullet through the barrel; is  
 19 that right?

20 A. That's correct.

21 Q. Okay. And so when the firing pin actually hits  
 22 the back of the shell casing, it leaves a dent or a mark;  
 23 is that right?

24 A. That's correct.

25 Q. Okay. And if you were to look at that dent and

101 1 that mark microscopically, could you tell specific --  
 2 could you have enough characteristics in some cases to  
 3 match up any shell if it's in good shape and the -- it's a  
 4 good enough mark? Can you -- do you have enough  
 5 characteristics of, I guess, marks made into the metal of  
 6 the shell where you can compare that to the weapon that  
 7 fired it and say conclusively that that shell casing was  
 8 fired through that weapon?

9 A. That's possible, yes.

10 Q. Okay. And can you also look at the  
 11 characteristics of a projectile or bullet that's gone  
 12 through the barrel of a firearm, and kind of the same way  
 13 look at the markings that are made and determine whether a  
 14 bullet was fired through a particular weapon?

15 A. Yes.

16 Q. Okay. Now, whenever you are going to decide to  
 17 do that, what is the very first thing, if I were to ask  
 18 you to compare this particular weapon, say a firearm  
 19 that's a handgun, 9 millimeter, if I were to ask you to  
 20 compare that to a shell casing found at the scene of an  
 21 offense and they were not found together, two different  
 22 things, how would you specifically start your  
 23 investigation to determine whether that shell casing was  
 24 fired through that particular firearm?

25 A. After I receive the request, I would go to the

102 104 1 property room or transfer the evidence, maintain the chain  
 2 of custody. I would check it for safety. I would perform  
 3 a function test to make sure that it is functioning  
 4 properly. Excuse me. During that time I would write down  
 5 any identifying marks. I would examine the class  
 6 characteristics such as the rifling, number of grooves and  
 7 direction of twists, where the safeties are located, if  
 8 any, any other unique items that may be associated with  
 9 that weapon. Then I would go to our firing range where we  
 10 have a water tank, and I would use laboratory ammunition  
 11 to fire into the water tank and retain the barrel --  
 12 sorry, excuse me, retain the projectiles and the cartridge  
 13 cases for examination.

14 Q. Okay. Now, you said something about lands and/or  
 15 grooves and twists. What is all that?

16 A. When a barrel is manufactured, there is a set of  
 17 spiral grooves that are manufactured inside that barrel to  
 18 make the projectile more stable during flight. That  
 19 manufacturing process causes those -- those lands and  
 20 grooves to be imparted on the projectile as they come  
 21 out. There will be actual dips and high areas on the  
 22 projectile that we can view. That is where a lot of the  
 23 unique individual marks that I will use to do my  
 24 comparison are found.

25 Q. And so those lands and grooves, when a bullet is

1 forced through the barrel, the lands and grooves are what  
 2 makes it start to spin as it's going through the barrel,  
 3 correct?

4 A. That's correct, much like throwing a football, a  
 5 spiral football.

6 Q. And because -- and I guess the point would be  
 7 that a bullet flies faster, straighter, harder, more  
 8 accurately if it's spinning through the air?

9 A. That's correct.

10 Q. Okay. And sometimes, or that will, I guess, make  
 11 marks onto the bullet from the firearm; is that right?

12 A. Yes, it will.

13 Q. Okay. And you said class characteristics. Do  
 14 certain makes of firearms have a certain number of twists  
 15 and a certain, I guess, way of right-to-left lands and  
 16 grooves that a certain manufacturer will have in most or  
 17 all of its firearms?

18 A. Yes, they are usually within one class; a  
 19 manufacturer will have one particular style.

20 Q. Okay. And were you asked in this particular case  
 21 to compare different bullets and shell casings found at  
 22 various scenes that are related to this case?

23 A. Yes, I was.

24 Q. Okay. And as part of your practice, whenever you  
 25 do these comparisons, do you generate a written report?

106 1 A. Yes, I do.

2 Q. And did you generate a written report in this  
 3 case?

4 A. Yes.

5 MR. STRAHAN: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q. I have handed you what's been marked as State's  
 8 Exhibit No. 226. Can you tell us what that is?

9 A. This is a copy of my report and notes from my  
 10 case number FW10-06104, and I believe the Johnson County  
 11 number S10-15645.

12 Q. Okay. If there were different crime scenes that  
 13 shell casings and bullets came from, and we wanted to  
 14 compare them all, would your report contain several case  
 15 numbers?

16 A. Yes.

17 Q. Okay. And, in fact, did you generate multiple  
 18 reports in this specific case?

19 A. Yes, I did.

20 Q. Okay. And did you also, in each one of those  
 21 reports entitled -- I guess the top of it, the case report  
 22 having to do with the Fort Worth P.D. cases that it was  
 23 associated with or in this case the Johnson County case?

24 A. Yes, I did.

25 Q. Okay. And did you also list all the associated

1 cases in each report and kind of have a master list in  
 2 every report that contains all of your findings on all the  
 3 casings?

4 A. Yes, I did.

5 Q. And bullets. Okay. Is this State's 226 a -- the  
 6 actual report that you came up with in this case?

7 A. It's a copy of it, yes.

8 Q. But does it appear to be the report, the exact  
 9 report without any alterations or changes?

10 A. Yes, it does.

11 MR. STRAHAN: I would offer State's 226.

12 MR. HEISKELL: No objection, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 226 admitted.)

15 Q. (BY MR. STRAHAN) I have also laid in front of  
 16 you some State's Exhibits that have already been admitted  
 17 into this case. Each one of them has a State's Exhibit  
 18 number along with a projectile or a shell casing inside  
 19 them. Okay. And there also is a bag that these things  
 20 had come to court in sealed with a lot of markings  
 21 considered with chain of custody and things like that.

22 For example, in State's 225, can you look on the bag that  
 23 it came in. Do you see your markings on this bag?

24 A. Yes, I do.

25 Q. Okay. And I will represent to you that your

106 1 markings, well, they're on all of these. Chain of custody  
 2 is complete. These items are already in evidence. Okay.  
 3 And I'm going to ask you which items you compared, and  
 4 make a list, if I could, of all the items you compared in  
 5 your report.

6 A. Okay.

7 Q. Do you have your report, your own copy in front  
 8 of you?

9 A. Yeah, let me take a look here.

10 Q. First of all, I'm going to have you take a look  
 11 at State's 29, which is contained within State's Exhibit  
 12 29-A. Can you take a look at State's 29. You can see how  
 13 that's marked. And tell us what that is.

14 A. It's a Hi-Point Model C9 pistol, 9 millimeter.

15 Q. Okay. And can you tell us specifically something  
 16 about the Hi-Point as a manufacturer of those types of  
 17 pistols.

18 A. Hi-Point is unique because the manufacturer  
 19 rifles the barrels in a nine left, which is very  
 20 uncommon. In fact, it's the only known manufacturer to  
 21 use the nine left, left-handed twist on the land/groove  
 22 impressions.

23 Q. Okay. And so if a bullet were to be fired  
 24 through that or if you found any bullet that had those  
 25 specific nine left lands and grooves, can you conclude,

1 just based on that, that it was at least fired through a  
 2 Hi-Point pistol?  
 3 A. Yes, I can.  
 4 Q. Can you also determine by looking at the  
 5 projectile, if you have enough of it, the size of the  
 6 round, whether it be a .38 or 9 millimeter, whatever it is?  
 7 A. I can put it in a caliber class, yes.  
 8 Q. And so you can take a look at a bullet with your  
 9 microscope and look at these lands and grooves and  
 10 determine that this is a 9 millimeter fired through a  
 11 Hi-Point 9 millimeter handgun; is that correct?  
 12 A. Yes.  
 13 Q. And you -- is there some specific history with  
 14 the manufacturer of Hi-Point why it's the only one that  
 15 has that particular land and groove setup?  
 16 A. The manufacturer attends a number of our  
 17 conferences, and over time he has learned that his weapons  
 18 are used by criminals to do bad things, so he, in order to  
 19 help us out, has manufactured them uniquely so that we can  
 20 easily identify that particular class of weapon. We  
 21 can't -- the nine left doesn't allow us to identify back  
 22 to a specific Hi-Point, but we can say it's from a  
 23 Hi-Point firearm.  
 24 Q. Okay. And so the manufacturer knowing -- is that  
 25 an expensive, like really good handgun?

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1 Q. And did you assign a specific number in your  
 2 report to the magazine?  
 3 A. I assigned the same number, the 8443-03.  
 4 Q. Okay.  
 5 A. Sorry. Excuse me. It's 8443-04. I'm sorry, I  
 6 misspoke.  
 7 Q. All right. There's a lot of writing on there; is  
 8 there not?  
 9 A. Yes, there is.  
 10 Q. Can you tell us something about that magazine?  
 11 How many bullets or how many shells does that particular  
 12 magazine hold?  
 13 A. I'll have to refer to my notes quickly. That  
 14 magazine has a capacity of eight rounds.  
 15 Q. Okay. And is it possible for this particular  
 16 Hi-Point weapon to have one in the chamber and all eight  
 17 of those rounds within the magazine altogether?  
 18 A. Yes, it is.  
 19 Q. And so does the pistol itself have the capability  
 20 of having nine live rounds in it?  
 21 A. Yes.  
 22 Q. Okay. Can you tell us one thing, what is the  
 23 difference between centerfire cartridges and rimfire  
 24 cartridges?  
 25 A. In a rimfire cartridge, the primer which is --

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1 A. In my personal opinion, it's not an expensive  
 2 handgun, no.  
 3 Q. Okay. And I guess there's -- everybody has their  
 4 own opinion about that, would you agree?  
 5 A. I -- yes.  
 6 Q. And so have you personally seen and had the  
 7 occasion to do some scientific testing based specifically  
 8 on State's No. 29, State's Exhibit No. 29, the  
 9 9 millimeter pistol?  
 10 A. Yes, I did.  
 11 Q. Okay. Did you assign a specific number in your  
 12 lab so that you can keep track of this item number was  
 13 tested against all these other item numbers?  
 14 A. Yes, I did.  
 15 Q. What is the lab number you used for this item?  
 16 A. 8443-03.  
 17 Q. Now I'm also going to hand you State's Exhibit  
 18 No. 75. Will you take a look at this, and 75-A. Take a  
 19 look at what is 75-A, and if you would, tell me, please,  
 20 what that item is.  
 21 A. It's a Hi-Point pistol magazine.  
 22 Q. Okay. And was that something that came with this  
 23 particular Hi-Point 9 millimeter pistol whenever you  
 24 received this in evidence from Mike Gaudet?  
 25 A. Yes.

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1 the primer material is basically a -- an explosive which  
 2 will explode when it is hit with something. So in the  
 3 rimfire, that material is placed around the edge of the  
 4 cartridge case, around the bottom. So it is hit there on  
 5 the rim.  
 6 In a centerfire, there is a primer containing  
 7 that same material in the middle. And so that primer,  
 8 when it is hit, the primer will explode and cause the  
 9 reaction with the gunpowder inside the cartridge.  
 10 Q. Again, are those types of weapons specific, of a  
 11 particular pistol, is it specific to only being able to  
 12 fire rimfire versus centerfire or can the same weapon fire  
 13 both?  
 14 A. It will only fire one or the other.  
 15 Q. Okay.  
 16 A. Generally.  
 17 Q. All right. And so I guess you would have to know  
 18 something about that weapon if you were going to go buy  
 19 some new ammunition?  
 20 A. Correct.  
 21 Q. Because if you didn't know something about that  
 22 weapon and you were to buy rimfire versus centerfire, it  
 23 wouldn't actually work, would it?  
 24 A. Correct.  
 25 Q. You would have to put some thought into that

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1 before you reloaded it or bought some new ammunition,  
 2 would you not?  
 3 A. Yes, you would.  
 4 Q. You would have to be accurate for it to work?  
 5 A. Correct.  
 6 Q. Okay. Now I'm also going to show you State's  
 7 Exhibits 73-A and 74-A. Can you take a look at that and  
 8 tell me if you have seen those before?  
 9 A. Yes, I have.  
 10 Q. What are they?  
 11 A. They are unfired cartridges, 9 millimeter,  
 12 Federal.  
 13 Q. Okay. And are there many, many brands of  
 14 9 millimeter cartridges out there that are easy to come  
 15 by on the market from Walmart or, you know, Target,  
 16 wherever --  
 17 A. Yes, there are.  
 18 Q. -- Academy? Yes, there are?  
 19 A. Uh-huh.  
 20 Q. And just if you could estimate, you may not know  
 21 this, about how many different brands can the general  
 22 public get of ammunition for a 9 millimeter?  
 23 A. I would have to completely guess, ten -- maybe a  
 24 hundred. There's a very large number of different  
 25 manufacturers for 9 millimeter.

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1 come with the State's Exhibit No. 29, were they together  
 2 with that?  
 3 A. Yes.  
 4 Q. Okay. And were there a couple of extra live  
 5 rounds that also came with that?  
 6 A. Yes, there were.  
 7 Q. So you had a total of four; is that right?  
 8 A. Total of four, correct.  
 9 Q. Did you actually fire any of those rounds in your  
 10 testing?  
 11 A. Yes, I consumed two in testing.  
 12 Q. And so if originally you were brought with four,  
 13 when it left your lab, it's going to have two, and that  
 14 would be why?  
 15 A. Because I consumed two in testing. The fired  
 16 rounds are maintained at the Crime Laboratory.  
 17 Q. Okay. I'm going to hand you what has been  
 18 admitted into evidence as State's 224 and 225. Would you  
 19 tell me if you have seen those before.  
 20 A. Yes, I have.  
 21 Q. Okay. And can you tell us what 224 is?  
 22 A. 224 is a cartridge case, Federal, 9 millimeter.  
 23 Q. Okay. And can you look on this bag and see what  
 24 the original, whenever that was collected, what that  
 25 original item was?

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1 Q. Okay. And also in those, say, okay, let's talk  
 2 about Federal particular ammunition. Federal makes  
 3 9 millimeter obviously ammo or ammunition for 9 millimeter  
 4 handguns; is that right?  
 5 A. Correct.  
 6 Q. And do you, as part of your job, have to go out  
 7 and, I guess, obtain test fire ammunition in some cases if  
 8 you get a weapon where you need more ammunition to test it  
 9 or a weapon that you don't see very often? Do you have to  
 10 get or -- you know, get some new ammo sometimes?  
 11 A. Yes, we do. We try to maintain a comprehensive  
 12 ammunition library, but it's difficult.  
 13 Q. Okay. And just generally speaking, if you were  
 14 to go to Walmart or Academy, some place, the Federal  
 15 ammunition, if you know, how many, generally, comes in a  
 16 box if it's centerfire 9 millimeter?  
 17 A. Anywhere from 20 to 50.  
 18 Q. Okay. And so you don't have boxes of 10, do  
 19 you? Have you ever seen that?  
 20 A. I haven't personally seen one, but I wouldn't be  
 21 surprised if they existed.  
 22 Q. Okay. But generally speaking, 20 to 50; is that  
 23 correct?  
 24 A. About, yes.  
 25 Q. Okay. And are these particular ones, do they

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1 A. The original item number is BRB-01.  
 2 Q. Okay. And I will represent to you that this  
 3 shell casing came near the body of Nancy Weatherly who was  
 4 murdered in Godley, Texas. There's been testimony to that  
 5 already. And what is the other one, 225, what is that?  
 6 A. It's a fired projectile.  
 7 Q. Okay. And can you tell us if you've seen that  
 8 before?  
 9 A. Yes, I have.  
 10 Q. Okay. And that fired projectile, we're talking  
 11 about a bullet that's already been fired through a weapon,  
 12 correct?  
 13 A. Correct.  
 14 Q. Okay. Can you tell what the original number was  
 15 when that was originally collected?  
 16 A. BRB-16.  
 17 Q. And I will represent to you again that this  
 18 particular bullet was found on the kitchen table in Nancy  
 19 Weatherly's home in Godley, Texas. Now, did you assign  
 20 specifically in your own report a corresponding number so  
 21 that you could keep track of your own number for these two  
 22 items?  
 23 A. I did not. I maintained the Johnson County  
 24 numbers.  
 25 Q. Oh, you did. Okay. So your number for State's

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1 224 would still be BRB-01; is that correct?

2 A. That's correct.

3 Q. And your number for -- yeah, your number for the  
4 fired bullet would also be then BRB-16?

5 A. That's correct.

6 Q. All right. Okay. I'm going to hand you two  
7 exhibits that have been admitted as State's Exhibit 96-A  
8 and 95-A. Can you tell us what those are? Can you tell  
9 us what State's Exhibit 96 is?

10 A. 96 are four Federal 9 millimeter cartridge cases.

11 Q. And did you assign a specific lab number of your  
12 own to those?

13 A. The number I assigned to these are 8410-01 A.  
14 through D.

15 Q. Was there a Fort Worth P.D. case number  
16 associated with those particular cases?

17 A. Yes. The Fort Worth P.D. number is 10-068302.

18 Q. Okay. And I will represent to you that those  
19 cases were collected at the scene of a drive-by shooting  
20 at the home of Juan Ramirez, based on that Fort Worth case  
21 number. Can you also take a look, if you would, at  
22 State's No. 95-A, and just tell us what that is?

23 A. These are six fired projectiles.

24 Q. Okay. And did you assign your own specific -- by  
25 the way, does this come from the exact same Fort Worth

1 Q. Okay. And I'll represent to you that we have had  
2 testimony that those cases were found at the scene of a  
3 Lowe's parking lot of a scene of an attempted robbery and  
4 shooting, a firearm having been fired. Did you also look  
5 at those and test those against this particular State's  
6 Exhibit No. 29, Hi-Point 9 millimeter handgun?

7 A. Yes, I did.

8 Q. Okay. And finally, going to hand you what has  
9 been marked State's 164-A-1-A through A-4-A and State's  
10 Exhibit 164-A-5-A. Would you look through those, please.

11 A. These are four cartridge cases and one  
12 projectile.

13 Q. Okay. And do they have a Fort Worth P.D. number  
14 that's assigned to them as well?

15 A. Yes, it is 10-068307.

16 Q. And this is four cases and one projectile; is  
17 that correct?

18 A. That's correct.

19 Q. I will represent to you we've had testimony based  
20 on that particular case number that that has to do with a  
21 attempted robbery and shooting of an individual on 26th  
22 Street in Fort Worth, Texas by the name of Samaniego. I  
23 neglected to ask you this before, but on these, can you  
24 tell us if you have assigned your own particular lab  
25 number that's related to these, the four cases and the one

1 P.D. case number as what I just represented to you were  
2 the cases found at the scene of the Juan Ramirez drive-by  
3 shooting?

4 A. Yes, it does.

5 Q. Okay. And what number did you assign your lab  
6 for these six fired projectiles?

7 A. 8410-02 E. through J.

8 Q. And have you seen these before?

9 A. Yes, I have.

10 Q. In fact, all the items that I'm showing you to  
11 this point, you received those in evidence and you also  
12 tested them in relation to State's Exhibit No. 29, this  
13 specific 9 millimeter Hi-Point firearm; is that correct?

14 A. That's correct.

15 Q. Okay. All right. I'm going to hand you what has  
16 been admitted as State's Exhibit No. 130. Can you tell us  
17 if you have seen that before?

18 A. Yes, I have.

19 Q. And what is that?

20 A. They are two cartridge cases.

21 Q. Okay. And do they have an associated Fort Worth  
22 P.D. number on them as well?

23 A. Yes, they do.

24 Q. Can you tell me what that is, please?

25 A. 10-068316.

1 fired bullet?

2 A. Yes. My lab number for the cases are 8452-01 A.  
3 through D. and the projectile is 8452-02.

4 Q. What is the purpose of assigning all these  
5 numbers here? There's already numbers assigned from  
6 different agencies, I suppose, but you have to assign your  
7 own; is that correct?

8 A. We assign our own through generation of our  
9 laboratory information management system. It's actually  
10 the last four digits of the Fort Worth Police Department  
11 tag number.

12 Q. Okay. And the tag number is what they actually  
13 put on these particular items, and then it's associated  
14 with a case number, but the tag number is a little bit  
15 different; is that right?

16 A. Correct.

17 Q. I didn't ask you on 130, you've already  
18 represented that you've looked at those. We talked about  
19 that, but I didn't ask what your lab number was on State's  
20 Exhibit No. 130.

21 A. 8510-01 A. and B.

22 Q. Okay. Now looking at your report, State's  
23 Exhibit No. 226, did you go through and do the testing  
24 like you've talked about to try to determine whether any  
25 of these shell casings were specifically fired -- whether

1 you can tell scientifically whether they were specifically  
 2 fired through State's No. 21 -- 29, that 9 millimeter  
 3 pistol?

4 A. Yes, I did.

5 Q. And can you tell us, based on your report, what  
 6 was your conclusion as to BRB-01, the case found at the  
 7 home of Nancy Weatherly? Was that fired through State's  
 8 No. 29?

9 A. Yes, it was.

10 Q. Was -- turning now to State's Exhibit No. 96,  
 11 which would be your lab numbers 8410-01 A. through D.,  
 12 those four cases found outside the home of Juan Ramirez,  
 13 were those four cases fired from State's No. 29, the  
 14 9 millimeter handgun?

15 A. Yes, they were.

16 Q. Looking at State's 130, which would be the two  
 17 cases, your lab number 8510 or item number 8510-01 A.  
 18 through B., A. and B., are those two cases, were they  
 19 fired through State's No. 29, that particular 9 millimeter  
 20 handgun?

21 A. Yes, they were.

22 Q. And the four cases from the Samaniego shooting,  
 23 your lab item No. 8452-01 A., B., C. and D., were all four  
 24 of those cases fired through State's No. 29, that  
 25 particular Hi-Point 9 millimeter semi-automatic handgun?

122 1 A. Yes, they were.

2 Q. Okay. And tell us a little bit again about how  
 3 you went about specifically testing this handgun. Tell us  
 4 about the fired casing and how you compared those.

5 A. After I obtained the test fires, I place them on  
 6 our comparison microscopes, which is basically two  
 7 microscopes that you have like in your high school biology  
 8 class, but they're connected with a special optical bridge  
 9 which allows an examiner or anyone really to see both  
 10 sides of the microscope through one set of oculars. It's  
 11 much like looking through a pair of binoculars, and so the  
 12 screen is cut in half and I can see whatever I'm  
 13 comparing.

14 In this case, the evidence was on one side  
 15 and the test fires were on the other. And I was able to  
 16 line up the individual characteristics and determine that  
 17 they were indeed fired from that particular pistol.

18 Q. Okay. And so that would be a total that you  
 19 tested that I have got written here. What is the total  
 20 number of cases that were tested that I have written up  
 21 here? How many total are we just now talking about?

22 A. 11.

23 Q. So 11 cases tested and all 11 were fired from  
 24 this particular weapon; is that correct?

25 A. That's correct.

121 1 Q. And the capacity of that weapon is how many  
 2 total?

3 A. Nine.

4 Q. And whenever you received it, it had four live  
 5 rounds, correct?

6 A. That's correct.

7 Q. Okay. And so if it had four live rounds in  
 8 there, and you know that 11 had been fired, correct, so  
 9 that would be a total of 15 rounds at some point through  
 10 that weapon; is that right?

11 A. That's correct.

12 Q. Which means is there any possibility of firing 11  
 13 bullets through this weapon without having to reload it at  
 14 some point?

15 A. It's not possible.

16 Q. Okay. Now, did you also do a comparison as to  
 17 the particular bullets that we have talked about, the  
 18 fired bullets in these cases?

19 A. Yes, I did.

20 Q. Okay. And tell us again how did you go about  
 21 doing that?

22 A. Basically the same fashion. After I obtained the  
 23 test fires, I placed them on the comparison microscope and  
 24 looked for individualizing characteristics to make an  
 25 identification.

122 1 Q. Let me ask you this. Just in a general sense, a  
 2 shell casing in a semi-automatic, well, this particular  
 3 semi-automatic Hi-Point 9 millimeter, if I'm standing here  
 4 and I shoot, does the shell casing automatically eject?

5 A. If it's -- yes, it does.

6 Q. Okay. Semi-automatic. And so it would eject and  
 7 another one pops up and it's ready to shoot again; is that  
 8 correct?

9 A. That's correct.

10 Q. And what's the difference between an automatic  
 11 and semi-automatic?

12 A. An automatic, if you pull the trigger, it will  
 13 continue to fire until the weapon is empty.

14 Q. Okay. And so for a semi-automatic, it reloads as  
 15 long as there are shell casings in the magazine, but you  
 16 still have to pull the trigger each time?

17 A. That is correct.

18 Q. And the shell casings on this particular weapon,  
 19 how do they eject?

20 A. I'm sorry, I don't understand.

21 Q. Whenever you fire a shell casing, it doesn't stay  
 22 in the weapon, does it?

23 A. No, it does not.

24 Q. Okay. Does it eject out?

25 A. Yes, that's correct.

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1 Q. How does it do it on this one?  
 2 A. As the slide moves rearward, the extractor will  
 3 pull the projectile -- or sorry, the cartridge case out  
 4 and the ejector will hit the cartridge case and it will  
 5 fly out the ejection port.

6 Q. And do the manufacturers of not just this one but  
 7 all weapons, do they specifically make it come out at an  
 8 angle in a direction so, number one, it doesn't pop up and  
 9 hit you in the face?

10 A. I believe they attempt to do so, yes.

11 Q. Okay. All right. And do a lot of them have like  
 12 a right ejection, up to the right or something like that,  
 13 something like that?

14 A. Under ideal circumstances. There are a lot of  
 15 factors that can play into that though.

16 Q. It could jam, it could hit something on the way  
 17 out, it could flip a different direction?

18 A. That's correct.

19 Q. But the point is for that to automatically eject  
 20 away from the weapon so it's ready to fire again?

21 A. That's correct.

22 Q. Okay. All right. And so a shell casing, when it  
 23 comes out of a gun, just generally speaking, it would fly  
 24 off and land somewhere; is that fair to say?

25 A. That's correct.

1 of a person's body or find them at a crime scene, dig them  
 2 out of a wall, there's lots of things, correct?

3 A. Correct.

4 Q. Okay. And so does a bullet itself, generally  
 5 speaking, is a bullet in better shape or worse shape as a  
 6 piece of evidence in your experience than a shell casing  
 7 that simply ejects and falls to the ground?

8 A. A projectile will often hit something in flight.  
 9 It has to stop in some fashion, so it's often damaged.

10 Q. Okay. And -- and if it whether -- yeah, whether  
 11 it goes through a person's bones or through a wall or  
 12 whatever, generally speaking, unless it falls and then  
 13 just falls from the sky and gently lays on the ground,  
 14 there's probably some damage to that, correct?

15 A. That's correct.

16 Q. And are the components of a general projectile of  
 17 a bullet, is that made of the same thing as the jacket  
 18 that -- and the shell casing?

19 A. I'm sorry, could you repeat.

20 Q. The bullet is made -- the projectile itself, is  
 21 it different from the jacket that it's fired through and  
 22 the shell casing?

23 A. Oh, the casing and the projectile are usually  
 24 made of different material.

25 Q. Okay. And is the bullet generally made of lead

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1 Q. Okay. And if conditions were perfect, no -- if  
 2 it's outside, no rain or wind or something running over  
 3 it, if it -- it would fall and sit there; is that right?

4 A. That's correct.

5 Q. Okay. What happens, generally speaking, to a  
 6 bullet whenever it comes out of a gun?

7 A. It will fly through the air in a parabolic shape  
 8 with a curve on it. It will start off nice and flat. And  
 9 then as it goes -- as it continues in its path, it will go  
 10 down.

11 Q. Okay. And so how many -- I -- this is probably  
 12 an unfair question, but how many bullets and shell casings  
 13 do you think you've reviewed in your career? Big number?

14 A. I've completed approximately a hundred, over --  
 15 I've completed over a hundred cases dealing with firearms  
 16 in my career.

17 Q. And I guess what I'm getting at is when a bullet,  
 18 if you're asked to compare a bullet with a shell casing,  
 19 it's because that bullet was or the shell casing were  
 20 believed to have been involved in a crime, correct?

21 A. That's correct.

22 Q. Okay. And in that particular case, they are  
 23 retrieved as evidence?

24 A. That's correct.

25 Q. And so somebody would have to either dig them out

1 or some kind of component like that?

2 A. In this case, they were all jacketed with copper  
 3 with a lead core.

4 Q. Okay. So the jacketing copper, which means the  
 5 shell casing had copper?

6 A. The projectile was a copper jacket. The casing  
 7 itself was brass.

8 Q. Okay. And so the projectile itself would be  
 9 copper jacketed but it's lead on the inside?

10 A. Correct.

11 Q. Okay. Is lead a hard or soft substance compared  
 12 to these other materials?

13 A. It is a soft substance.

14 Q. And so does that tend to get damaged more than a  
 15 harder substance would?

16 A. Yes, it will be damaged more.

17 Q. For those reasons, is it easier for you, based on  
 18 how you get these types of things into your lab, is it  
 19 harder or easier to do your comparison and get conclusions  
 20 on a bullet or the shell casing?

21 A. In general, shell casings are easier to make an  
 22 identification from.

23 Q. Okay. But it's still possible to get an  
 24 identification from both?

25 A. Yes, of course.

1 Q. If a bullet is in poor shape or a particular  
 2 weapon doesn't make good enough individual markings on it,  
 3 can you still see in cases, based on other types of  
 4 markings like the lands and grooves, that it came from a  
 5 particular type of weapon?

6 A. Yes, I can.

7 Q. And did you do a comparison on all of the bullets  
 8 in -- that I've written on the board that you've included  
 9 in your report?

10 A. Yes, I did.

11 Q. Okay. Let's talk about BRB-16 in your report.  
 12 Bullet found next to the body of Nancy Weatherly. What  
 13 can you tell us? Do you know, can you say scientifically  
 14 that that bullet was specifically fired through this  
 15 9 millimeter handgun?

16 A. I cannot.

17 Q. Okay. And why can you not?

18 A. There were -- there was damage done to the  
 19 projectiles, and I was unable to, without a doubt, in my  
 20 experience, say that it was fired from that particular  
 21 weapon.

22 Q. Okay. And so if you don't have enough on that  
 23 basic bullet, does that mean it was most definitely not  
 24 fired through that weapon or does it mean you just don't  
 25 have enough to say scientifically that it was?

130 1 A. I can't say whether it was or was not fired from  
 2 that weapon.

3 Q. So specifically your results, on your results on  
 4 this projectile found in the home of Nancy Weatherly, you  
 5 didn't believe you had enough to say, yes, out of this  
 6 specific weapon, or no, correct?

7 A. Correct.

8 Q. So you didn't say it was and you also didn't rule  
 9 it out?

10 MR. WESTFALL: Object to leading, Your Honor.

11 A. Correct.

12 THE COURT: Sustained.

13 Q. (BY MR. STRAHAN) Could you tell anything else?  
 14 If you can't tell specific to this handgun, were you able  
 15 to determine anything else? Did you have enough  
 16 characteristics to do that?

17 A. I had enough characteristics to determine that it  
 18 was nine left and that it was fired from a Hi-Point  
 19 firearm.

20 Q. So while you didn't have enough markings and  
 21 characteristics in your own mind to determine that it was  
 22 with this specific handgun, you can tell us that it was  
 23 fired through a Hi-Point 9 millimeter semi-automatic  
 24 handgun?

25 A. That is correct.

131 1 Q. Okay. Let me ask you this. We -- in regard to  
 2 other things, like fingerprints, are you familiar with  
 3 generally, not that you're an expert in that area, but are  
 4 you familiar with how fingerprints work, where they look  
 5 at, you know, these different markings specifically and  
 6 curls and whatever? Are you --

7 A. Right.

8 Q. Do you understand how that kind of works?

9 A. In general terms, yes.

10 Q. And do you know whether or not in the past there  
 11 has been specific, like FBI or other rules as to how many  
 12 specific markings you have to have before you can call it  
 13 the same print?

14 A. I believe there's some debate whether or not  
 15 there should be a certain threshold of identifying marks  
 16 within the latent print field.

17 Q. What I'm getting at is, do you have that in  
 18 yours? Can you find marks that match up, but is there  
 19 a certain threshold number that you say, hey, I need  
 20 two more to call it conclusively fired through a weapon,  
 21 or I need this many differences to say it absolutely was  
 22 not?

23 A. I don't particularly use a certain number, but in  
 24 this case I did find some similarities. They just weren't  
 25 enough for me personally to determine that that was -- the

132 1 projectile was fired through that weapon.

2 Q. Let me ask you this. The casing themselves,  
 3 we've had a conversation about how they're generally in  
 4 better shape. Were they in better shape than the  
 5 projectiles overall in all these cases?

6 A. Yes, they were in better shape overall and  
 7 they're also marked better.

8 Q. Marked better. And again, you looked at all  
 9 those, found they were fired through that particular  
 10 weapon, correct?

11 A. Correct.

12 Q. Do you think that any reasonable firearm examiner  
 13 would differ with your opinion on the cases?

14 A. I don't believe so, no.

15 Q. That's real obvious right there, correct?

16 A. Correct.

17 Q. Okay. Let's talk about the six fired bullets,  
 18 your lab numbers 8410-02 E. through J. Were you able,  
 19 based on your analysis of those through the microscope, to  
 20 find enough characteristics to say conclusively that it  
 21 was or was not fired from these -- this particular  
 22 handgun?

23 A. I did not find enough individual characteristics  
 24 to determine if it was or was not fired from that  
 25 particular weapon.

1 Q. Okay. And were you -- and this is kind of the  
 2 same discussion we just had on the other one. Did it have  
 3 similarities?

4 A. There were some similarities, yes.

5 Q. Just not enough for you to say conclusively it  
 6 was fired out of this particular weapon?

7 A. That is correct.

8 Q. Did you find enough characteristics to determine  
 9 whether what type of handgun that all six of these fired  
 10 bullets came from?

11 A. Yes, they were all nine left, which would  
 12 indicate they were from a Hi-Point firearm.

13 Q. Okay. All of them?

14 A. Yes.

15 Q. Okay. And finally, the one fired bullet in  
 16 Samaniego case, your item No. 8452-02, were you able to  
 17 find enough characteristics to determine conclusively  
 18 whether it was or was not fired out of this particular  
 19 weapon?

20 A. I was not able to determine.

21 Q. Okay. Were you able to find enough  
 22 characteristics to determine what type of weapon, what  
 23 class of weapon actually fired that?

24 A. Yes, it was fired from a Hi-Point firearm.

25 Q. Okay. So to, I guess, summarize, and in your

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## CROSS-EXAMINATION

1 BY MR. WESTFALL:

2 Q. Ms. Nollkamper, I'm Greg Westfall.

3 A. Hello.

4 Q. Tell us again -- I represent Mark Soliz, by the  
 5 way. Tell us again about the school that you went through  
 6 after you got your masters degree.

7 A. It was a in-house Fort Worth Police Department  
 8 Crime Laboratory, and it was a two-year program. It was  
 9 modeled after the Association of Firearms and Tool Mark  
 10 Examiners training manual. And it included modules on  
 11 cartridge case comparison, firearm functionality testing,  
 12 bullet comparison, serial number restoration, a number of  
 13 other modules. There were practical and written  
 14 examinations as well as practice, homework-type materials.

15 Q. And it sounds like what y'all learned in there  
 16 was the state-of-the-art of the art and science of tool  
 17 mark examination in what you do?

18 A. Yes, it was.

19 Q. And you're with the Fort Worth P.D., right, Fort  
 20 Worth P.D. Crime Lab?

21 A. Yes, I am.

22 Q. And do y'all have -- use state-of-the-art  
 23 equipment there, up to date?

24 A. It is the -- we have the normal microscopes that

134 1 written report, in looking at all of these items, you --  
 2 all these items establish conclusively to a scientific  
 3 certainty that all the cases we've listed there were fired  
 4 through this particular weapon?

5 A. That is correct.

6 Q. Okay. And while you didn't have enough to say  
 7 whether each and every projectile was fired through that  
 8 particular weapon, you did say that based on what you  
 9 could see on those items, they were all fired through a  
 10 Hi-Point 9 millimeter semi-automatic handgun?

11 A. That is correct.

12 Q. Okay. And you said you personally, I guess,  
 13 could not make the call on all of the bullets. They  
 14 didn't have enough characteristics for you; is that  
 15 correct?

16 A. That is correct.

17 Q. On any of those bullets, did any of them have  
 18 enough characteristics for you to rule them out as having  
 19 been fired through that particular weapon?

20 A. No, they did not have enough characteristics to  
 21 rule out.

22 Q. All of them were fired through a Hi-Point  
 23 9 millimeter?

24 A. That is correct.

25 MR. STRAHAN: I'll pass the witness.

134

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1 most labs have.

2 Q. Okay. And the microscope that you're using is a  
 3 comparative microscope?

4 A. That's correct.

5 Q. And how long has that technology been around?

6 A. Since the '30s.

7 Q. And so the comparative microscope that you're  
 8 using is -- I mean, they didn't come out with some new  
 9 invention in the world of comparative microscopes and  
 10 y'all are behind the times, right?

11 A. No, it's basically the same microscope that was  
 12 developed by Dr. Goddard in the 1930s. Mine, of course,  
 13 is -- has newer optics, has a camera attached. And I  
 14 believe we got it three years ago, so it's a new scope.

15 Q. Okay. I'm picking up on the upshot of all of  
 16 this is that there are class characteristics of bullets  
 17 and then there's -- or of the tool marks that the rifle  
 18 makes or the pistol makes, there's class characteristics  
 19 and then there's individual characteristics?

20 A. That's correct.

21 Q. And that the class characteristics would make it  
 22 consistent that a round was fired out of a particular  
 23 weapon, right? If you looked at the class characteristics  
 24 and you knew the class characteristic, you could say those  
 25 are consistent?

1 A. Those fired out of a class of weapons, not a  
2 particular weapon.  
3 Q. Okay. So for the particular weapon, then I guess  
4 we need the individual characteristics?  
5 A. That's correct.  
6 Q. Did you bring any of your pictures?  
7 A. I do have some of my pictures, yes.  
8 Q. I have copies of them.  
9 A. Of -- I have a number of --  
10 Q. Are they Xeroxed copies?  
11 A. No, they're not. I have a number of -- these are  
12 the ones related to this particular case.  
13 Q. Okay. Then hold on to these. Am I remembering  
14 right that you did competitive shooting when you were  
15 young? That's how you got interested in guns?  
16 A. Yes, I did do competitive shooting when I was  
17 younger, yes.  
18 Q. And tell me, how long you been working with guns  
19 now?  
20 A. Oh, I've been around guns my entire life, but as  
21 far as a firearms examiner, been five years.  
22 Q. Okay. You still liking it?  
23 A. Yeah.  
24 Q. See, what I don't want to do, I don't want to  
25 take yours away from you. So I want to put these into

138  
1 evidence, but I want to use these if the Court will allow  
2 me just to put them on the screen. That's why I'm doing  
3 this. Do you have these two in your deal there? Tell you  
4 what, those are good enough, aren't they?  
5 A. Yeah.

6 MR. WESTFALL: Can I have these two marked.  
7 (Defendant's Exhibit Nos. 9 - 10 marked.)

8 MR. WESTFALL: Thank you.  
9 Q. I'm showing you what have been marked now as  
10 Defendant's 9 and 10. Do you recognize those?

11 A. Yes, I do.

12 Q. And are those pictures through your -- your  
13 comparative microscope on tool marks having to do with  
14 this case?

15 A. Yes, they are.

16 MR. WESTFALL: Your Honor, we move for  
17 admission of Defense 9 and 10.

18 MR. STRAHAN: Oh, I have no objection.

19 THE COURT: Defendant's 9 and 10 are  
20 admitted.

21 (Defendant's Exhibit Nos. 9 - 10 admitted.)

22 MR. WESTFALL: Thank you, Your Honor.

23 Q. (BY MR. WESTFALL) Ms. Nollkamper, this here,  
24 please tell us what this is.

25 A. That is a photomicrograph of the breech face area

137  
1 of a primer of the items 8510-01A, and I was comparing it  
2 to test fire from the Hi-Point pistol, 8443-03.  
3 Q. I've just given you a laser pointer. Could you  
4 please just kind of show us the different things that we  
5 see on this?  
6 THE COURT: You can stand up.  
7 A. This right here is what's called the primer  
8 pocket -- or sorry, the firing pin impression. That's  
9 where the firing pin actually hits the primer and  
10 causes the pressure-sensitive explosion to occur. These  
11 marks here are all breech face marks. They occur when  
12 the cartridge case or cartridge case primer, in this  
13 particular instance, hits against the breech face of  
14 the pistol.  
15 So where the -- there's a flat area. In  
16 that flat area, there's a hole where the firing pin  
17 will come through. That area will have some  
18 manufacturing marks that are -- microscopically show up  
19 like this.  
20 This line right here down the middle --  
21 sorry, my hand is shaking. This line you can see down the  
22 middle, that's where my scope splits. So on the left-hand  
23 side is the evidence, and on the right-hand side is the  
24 test fire.  
25 Q. Okay. And the test fire was one of the bullets

140  
1 that was actually recovered, right?  
2 A. Test fire No. 2 would not be. I believe 5 and 6  
3 were the ones that were recovered. I fired three from our  
4 lab and then --  
5 Q. Oh, okay. So this would be some from your stock?  
6 A. True, yes.  
7 Q. Fired out of the same pistol into the water?  
8 A. Right.  
9 Q. And so on this side over here, this is the --  
10 this split right here is where the microscope has two  
11 different lenses?  
12 A. Correct.  
13 Q. And this round thing here, are we looking at the  
14 primer here? Is that what this is?  
15 A. That's correct. The primer is what looks in  
16 this, because it's magnified, the half moon area would be  
17 the -- where the primer is.  
18 Q. And then this right here would be the dividing  
19 line between two different bullets. This is the one  
20 you're trying to match up?  
21 A. That's correct.  
22 Q. What conclusion were you able to reach based upon  
23 this?  
24 A. That this particular cartridge case was fired in  
25 a -- in the Hi-Point firearm.

1 Q. Okay. And how were you able to tell?

2 A. Well, as you can see, this particular one has  
3 lots and lots of marks. It starts all the way up at the  
4 top, and you can see how they come across all the way, all  
5 the way down really.

6 Q. Now, does it matter -- what is this thing right  
7 here? Does that thing matter?

8 A. When I line them up -- it does not matter. When  
9 I line them up, because I'm -- I have a small area I'm  
10 taking a picture of, I can't always get everything in, in  
11 the frame. We don't actually do the identifications off  
12 of the photographs. The photographs are basically just  
13 notes that we keep to remind us for the future what we saw  
14 that day instead of having to pull all the evidence out  
15 again, because it's usually here in court.

16 Q. I get it. I get it. Now, this here is  
17 Defendant's No. 10, and kind of looks like we're looking  
18 at a primer, right?

19 A. Yes, that's the same general area. It's lower  
20 down on the primer. Because these are my notes and  
21 they're to remind me, I try to take a -- I don't -- I try  
22 to take pictures of different places on the primer so I  
23 have a good representation. Back before they had  
24 photomicrographs ability, they would actually draw these  
25 out. So this is just a easier way and more accurate way

142 1 of taking notes basically.

2 Q. And more thorough way, for sure?

3 A. For sure.

4 Q. And these are called breech face marks?

5 A. That's correct.

6 Q. What is a breech face?

7 A. As I said previously, in the chamber on the back  
8 of the slide in this particular case, there is a flat area  
9 where the firing pin comes through. The cartridge case,  
10 the head of the cartridge case rests upon that when it is  
11 in battery and ready to fire. When the firing pin comes  
12 through and strikes that primer, that -- the power from  
13 that explosion of the primer and then subsequently the  
14 gunpowder within the cartridge, causes that cartridge case  
15 and, in this case, the primer, to hit against that flat  
16 area. And during manufacturing, marks were left behind by  
17 the different finishing processes that are imparted on the  
18 primer.

19 Q. Okay. So it just -- these lines and stuff  
20 from forming the breech face actually just get pounded  
21 into the -- because of the force from the bullet going  
22 backwards?

23 A. Essentially, yes.

24 Q. Is this another picture from the --

25 A. It's a picture from one of the related cases,

1 yes.

2 Q. Yeah, something have to do with this case or this  
3 whole situation? This one too?

4 A. Yes, it is.

5 MR. WESTFALL: Could I have these marked.  
6 (Defendant's Exhibit Nos. 11 - 12 marked.)

7 Q. Now I did that backwards. I'm showing you what's  
8 marked 11 and 12. These are the ones you just said that  
9 you identified, right?

10 A. Yes, they are.

11 MR. WESTFALL: Your Honor, I'll move for  
12 admission of Defendant's 11 and 12.

13 MR. STRAHAN: I don't have any objection.

14 THE COURT: Admitted.

15 (Defendant's Exhibit Nos. 11 - 12 admitted.)

16 Q. (BY MR. WESTFALL) Please tell us what we're  
17 looking at here. I -- first of all, is it in focus? Is  
18 this in focus?

19 A. It looks relatively in focus.

20 Q. Okay. Please tell us what this is.

21 A. This upper region here is a micrograph of a  
22 land impression. This area right here is what we  
23 call slippage. And basically slippage is when the  
24 projectile is going down the barrel, as it first  
25 engages that barrel, it will slip a little bit on the

144 1 land impressions, like as it get -- grabs purchase  
2 basically, and it will cause those marks. The lower area  
3 with the fewer markers on it is the groove impression, a  
4 photo of a groove impression. So it's all one little  
5 square of the -- the projectile.

6 Q. Okay. Tell us, please, about the lands and  
7 grooves. We've heard that term several times. Could you  
8 just tell us what that is? You can draw it if you need  
9 to.

10 A. Actually I have a --

11 Q. Oh, okay.

12 A. So basically this is a little plastic  
13 representation of what would be a really big barrel if it  
14 was complete. The land and grooves are manufactured into  
15 the barrel, and they spiral down. You can see how they  
16 have a little bit of a diagonal in them. You can imagine  
17 that they would continue spiraling that direction. The  
18 land impressions are the ones that are raised, hence  
19 "land", and the grooves are the lower ones. This adds  
20 stability to the projectile in flight.

21 Q. Makes it spin?

22 A. Correct.

23 Q. And hopefully not tumble out, right?

24 A. Correct.

25 Q. So then please show us what makes the land

1 impression, what makes the groove, or what are the land  
2 impressions and groove impressions on this?

3 A. The upper area with all the marks would be made  
4 by this raised portion here, and the lower, the lower part  
5 of the picture with the fewer marks would be made by  
6 the -- by this, the groove, the lower part.

7 Q. So this here is in a groove and this is a land?

8 A. Basically, yes.

9 Q. And is this one of the -- one of the bullets you  
10 were asked to look at?

11 A. Yes, it is.

12 Q. And this is the actual projectile obviously?

13 A. Yes.

14 Q. That's got the lands and grooves?

15 A. Correct.

16 Q. What conclusion, if any, were you able to reach  
17 as a result of this examination?

18 A. I did see some similarities here, but I was  
19 inconclusive because they weren't -- they weren't of  
20 quality and quantity that would allow me personally to  
21 make a identification.

22 Q. And this has a -- a line down the middle, is that  
23 -- that's your stereoscope?

24 A. That's -- that's with a comparison scope,  
25 correct.

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1 Q. That's amazing. So, I mean, what does Taurus do  
2 or Bersa? There's other cheap brands, right?

3 A. I'm -- off the top of my head, I don't know what  
4 their particular class characteristics are, but I know  
5 Hi-Point is a nine left.

6 Q. And you've actually met the manufacturer?

7 A. I have met him, yes.

8 Q. Where are they made?

9 A. I believe in Ohio.

10 Q. What did you -- did you study shoe comparisons  
11 and stuff when you were in your masters program?

12 A. I had a half a class on it, but not much.

13 Q. Just, I mean, I'm not going to ask you to make  
14 any comparisons, but this deal with the class  
15 characteristics and individual characteristics, they use  
16 the same -- same sort of thing in the shoe comparison, I  
17 guess tire comparisons?

18 A. Correct. It's the same general standard  
19 operating procedure, yes.

20 MR. WESTFALL: You can sit down.

21 THE WITNESS: Okay. Wasn't sure what was  
22 next.

23 MR. WESTFALL: Thank you so much for doing  
24 that.

25 I'm finished. Your Honor. Thank you. Thank

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1 Q. Now, different manufacturers, I guess, have  
2 different amounts of lands and grooves?

3 A. That is correct.

4 Q. Why?

5 A. It's their choice. It's their -- from my  
6 personal reading of literature, there's always been some  
7 debate as to whether more or less lands and grooves and  
8 which twist is better, but really it's just a choice of  
9 the manufacturer.

10 Q. I don't know, just common sense, it would seem  
11 like if you had more of those things it would, like, slow  
12 your bullet down?

13 A. I can't comment on that. I'm not versed in that  
14 particular subject.

15 Q. And when you say a twist, what do you mean?

16 A. That would be the spiral. It's going to -- the  
17 spiral is going to twist one direction or the other.

18 Q. And some of them are right-hand and some of them  
19 are left-hand?

20 A. That's correct.

21 Q. And Hi-Point is the only one that uses nine?

22 A. It is. Nine left.

23 Q. And they do that because they know that their  
24 guns get used in crimes?

25 A. That is correct.

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1 you. Pass the witness.

2 REDIRECT EXAMINATION

3 BY MR. STRAHAN:

4 Q. This is Defendant's Exhibit No. 9, and that's a  
5 great picture. You said that this -- these photographs  
6 you make to refresh your memory later?

7 A. That is correct.

8 Q. Okay. And I guess as a lay person, we want to  
9 just sit and say, wow, if it goes like that, it must be  
10 the same. That's a great picture, right?

11 A. Yes, that's a -- that's a very nice looking  
12 picture.

13 Q. Who took that picture?

14 A. I was quite happy with that picture.

15 Q. It's a nice picture. It shows a lot. And I  
16 can't help it, I guess it's human nature, I just want to  
17 look at that picture and go, standing right here with your  
18 black and white picture, I can tell that those two cases  
19 were from the same exact weapon. That's not fair for me  
20 to do, is it?

21 A. No. These are just notes that I keep in my --  
22 my -- during my examination.

23 Q. Okay. But is there a lot more to your scientific  
24 opinion than looking at these comparison on these two  
25 pictures and saying, yep, that's it?

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1 A. Yes, there is.

2 Q. So there's a lot more to it than that. Now, tell  
3 me about, again, what is a slippage mark?

4 A. Slippage occurs when the, like I said before,  
5 when the bullet starts traveling through the barrel, it  
6 needs to get purchase on those lands and grooves. And it  
7 will -- they'll slip just a little bit and cause --  
8 they're not up there anymore -- but cause those marks.

9 Q. Now, does it always slip exactly the same?

10 A. It's often you can find some individual marks in  
11 slippage. It doesn't -- there isn't always slippage  
12 though either.

13 Q. Okay. And so whether there is slippage or not  
14 slippage would make a difference even in bullets fired  
15 through the same barrel, correct?

16 A. Yes.

17 Q. Okay. And the difference in the slippage  
18 because, I guess, the bullet through the explosion has to  
19 catch and then start spinning, correct?

20 A. Correct.

21 Q. Okay. And so that is not going to be necessarily  
22 as accurate because there's more variables with the  
23 slippage and whether there's slippage at -- there at all;  
24 is that fair to say?

25 A. That's correct. There's more variables in

150 projectiles in general.

2 Q. Okay. And so you said before, it's a lot easier,  
3 I guess, to do cases than it is to do bullets, correct?

4 A. That's correct.

5 Q. Okay. I guess if I were to step on a wet floor  
6 and slip twice in two days, I might not slip the same way  
7 twice; is that fair to say?

8 A. Fair.

9 Q. So in Defendant's Exhibit No. 11, it looks really  
10 clear there kind of in the mid-section that there's -- and  
11 I hate to even say this, but there's seven or eight or  
12 nine lines that match up perfectly, just as what we're  
13 looking at. I know that's not the scientific term and you  
14 probably hate that, but there's several of these marks  
15 that line up perfectly at the bottom in the middle?

16 A. Yes, there are some similarities there, but  
17 that's only one of the nine lands and grooves. There are  
18 nine of them we have to examine and determine, you know,  
19 if there's enough for them to be called.

20 Q. Okay. And so if the only thing you were looking  
21 at was that particular land and groove, you might say this  
22 particular bullet was fired through that particular gun,  
23 if that's a good one that is similar; or is that not fair  
24 either?

25 A. I don't believe that's fair because we look at

1 the entirety of the projectile. We aren't going to -- we  
2 aren't going to make -- it's rare that we would make an  
3 identification off of a single land and/or groove.

4 Q. All right. And what part -- I guess what I'm  
5 getting at is how big in real life is this picture that  
6 we're looking at? What percentage of that bullet or  
7 what's left of a bullet are we really looking at, if you  
8 can put it in those terms?

9 A. Well, it's been magnified 55 times, so that would  
10 be -- it's hard to really quantify, but it's like the top  
11 of a pin, like a stick pin.

12 Q. That area is this top of a stick pin like a  
13 needle?

14 A. Yeah, like a little flat stick pin. It's a very,  
15 very small area.

16 Q. Okay. And you're talking --

17 A. In my best guestimation.

18 Q. The tip of a pin, needle?

19 A. The part you push.

20 Q. Oh, okay, like --

21 A. Not the tip of the pin but the head of the stick  
22 pin.

23 Q. I got you. Okay. And so something that tiny,  
24 looking at that portion, and it's magnified 55 times to  
25 where we can see it like this, correct?

152 A. Correct.

2 Q. And, again, on this particular bullet, this one  
3 being BRB-16 that I have represented to you was the bullet  
4 found at the home of Nancy Weatherly, and so this is one  
5 where you said there were not enough to make -- to confirm  
6 that it came out of that particular weapon, yet also not  
7 enough differences, I guess, to say that it did not?

8 A. That's correct. I didn't have enough quality or  
9 quantity.

10 Q. Okay. So it's just inconclusive then?

11 A. Yes.

12 Q. However, you did have an opinion as to whether or  
13 not this particular bullet was fired through a Hi-Point  
14 9 millimeter specifically, yes?

15 A. Yes, I did.

16 Q. Okay. And in your test firing, you test fired  
17 more than one shell or one bullet yourself; is that  
18 correct?

19 A. That's correct.

20 Q. Okay. And when you test fire, you fired into a  
21 tank of water? How does that work?

22 A. It's really important for us to get a nice,  
23 pristine projectile to compare to, if we can. One of the  
24 methods is to fire into a large tank of water. Our tank  
25 is about 4 by 15 by 4. And what that does is it just

1 absorb -- the water will absorb all of the energy of the  
 2 projectile, and the projectile will fall nicely to the  
 3 ground or to the bottom of the tank without any damage to  
 4 the projectile itself. And then we use a retrieval device  
 5 to get out and take a look at it.

6 Q. Okay. So in a controlled environment like that,  
 7 if you test fired two bullets, both of them are going to  
 8 be in as good and pristine, after having been fired, of  
 9 shape as they can possibly be in?

10 A. Yes, hopefully.

11 Q. And that's not going through a wall or going  
 12 through someone's body or bone or anything like that?

13 A. That's correct.

14 Q. Okay. Did you compare the two test fired  
 15 projectiles that you personally test fired?

16 A. Yes, I did.

17 Q. Okay. And did you -- these are ones under your  
 18 control into that water; is that right?

19 A. Yes.

20 Q. Did you have an opinion, based on your scientific  
 21 evidence, about those two projectiles that you personally  
 22 fired holding the same gun, do you have an opinion as to,  
 23 scientifically, based on that analysis, whether those were  
 24 fired out of the same particular Hi-Point handgun?

25 A. The test fires did not mark well either, so I

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1 the same gun that you watched being fired and then they're  
 2 really not any good for comparison?

3 A. That's not necessarily the truth. It could be  
 4 from wear. Even what you would consider, you know,  
 5 high-end guns can have wear and the barrel can not mark  
 6 well. It might be the actual ammunition. Every  
 7 manufacturer manufactures their projectile just a little  
 8 bit different with a different amount of -- you know, it's  
 9 a copper jacket but it's not pure copper, so there's  
 10 different -- it's an alloy, so it might be harder or  
 11 softer than others. There's a number of reasons why they  
 12 might not mark well.

13 Q. What's the most popular semi-automatic pistol?

14 A. I do not know that answer.

15 Q. I don't mean brand, I mean caliber.

16 A. I do not know that answer for sure.

17 Q. Certainly a 9 millimeter would be one you see?

18 A. A 9 millimeter is very common, yes.

19 Q. And the ammunition tends to be quite a bit  
 20 cheaper than, say, a 10 millimeter, some other handgun,  
 21 because even a 40 caliber --

22 A. In my experience, yes, buying 9 millimeter  
 23 ammunition is cheaper than 40.

24 Q. Tell us the process -- first of all, did you --

25 did anything I say sound like I was arguing with you about

154  
 1 actually, even knowing that they were fired, you know, me  
 2 personally firing them and knowing that they came from  
 3 that particular weapon, it was still difficult to make an  
 4 identification. So in my notes I put inconclusive,  
 5 meaning the individual marks didn't really show up very  
 6 well and it was difficult to see where they had any  
 7 agreement.

8 Q. So having fired them yourself, you had to write  
 9 in your own report that it was inconclusive even though  
 10 you had fired them from the same weapon?

11 A. That's correct. And I use the word  
 12 "inconclusive" more in my notes to term -- I know their  
 13 identification. I did it myself, so.

14 Q. Okay. So your memory is, on having fired those  
 15 two, is very conclusive?

16 A. Yes.

17 Q. Your scientific results on the two that you fired  
 18 are inconclusive?

19 A. Correct.

20 MR. STRAHAN: I'll pass the witness.

21 RECROSS-EXAMINATION

22 BY MR. WESTFALL:

23 Q. Starting to get the idea we shouldn't go out and  
 24 buy Hi-Point firearms. Is that -- I mean, is that because  
 25 the gun is so cheap that you couldn't even do two out of

155  
 1 your conclusions?

2 A. No.

3 Q. Okay. Good. The process that you did, just let  
 4 us know the process that you did, because I understand the  
 5 pictures are your notes, but what I was trying to discover  
 6 is what was the procedure that you used to make the  
 7 comparisons? And will the pictures help you to explain  
 8 it?

9 A. Actually if I might grab a --

10 Q. Yeah, please do.

11 A. These are big plastic projectiles. Basically it  
 12 would be the same thing as if we were on, you know -- if  
 13 we're looking through the microscope and we could match up  
 14 the different lands and grooves here. As you can see,  
 15 these ones have been manufactured with really large, gross  
 16 lands so you can see how you -- we would twist it. We  
 17 would put it on the microscope.

18 What I usually do is I find an area I like  
 19 that has some nice marks on it, and then I will use that  
 20 area and then rotate the other one. And then I will  
 21 rotate it to the next one and rotate it and trying to  
 22 match it up.

23 Projectiles are a little bit more difficult  
 24 because they do have so many other surfaces. Breech  
 25 traces -- or, sorry, the head of the cartridge case,

1 there's just one nice, flat surface, but with a  
 2 projectile, it's a 3-D surface to begin with, so it makes  
 3 it difficult to see everything all at once because the way  
 4 a microscope works, it's looking at a slice. So we're  
 5 trying to look at something that's looking at slices, but  
 6 in -- but it's actually 3-D. So we'll look at -- so --  
 7 it's the focus, you have to be very careful of the focus  
 8 and the lighting.

9       And I basically rotate one and then look down  
 10 the length and the breadth of it to see if I can find any  
 11 areas that look like they match. Then I'll rotate it  
 12 again and do the same thing over and over again until  
 13 hopefully I find some results.

14       Q. About how long will you spend looking at a  
 15 bullet?

16       A. It really depends on the particular bullet. A  
 17 lot of times I find that identifications are shorter  
 18 because if it's there, it's there. You -- it's really --  
 19 you know, it pops out at you.

20       Q. Yeah. Science speaks for itself?

21       A. Exactly.

22       Q. I would imagine -- well, let me just ask you. Do  
 23 you see yourself as, in your scientific evaluations and in  
 24 your scientific conclusions, do you see yourself as being  
 25 conservative, middle of the road, liberal? Or is that --

158       1 is there even such a thing in the world of science? Are  
 2 the shots just called as you see them?

3       A. I wouldn't characterize myself as anything in  
 4 particular, just...

5       Q. If it's there, it's there?

6       A. I want to make sure it's there. Especially, you  
 7 know, someone's -- when these matters are so important, I  
 8 don't want to make a mistake. I want to make sure that if  
 9 it's there, it's there.

10       MR. WESTFALL: Excellent. Thank you.

11       FURTHER REDIRECT EXAMINATION

12 BY MR. STRAHAN:

13       Q. I asked you before about the casings and whether  
 14 reasonable scientific minds you thought other firearm tool  
 15 mark experts could differ on that. And you were very  
 16 solid on that. There's a great, a lot, plenty of marks  
 17 with characteristics; is that correct?

18       A. That's correct.

19       Q. And with less markings whenever something is  
 20 inconclusive, if another expert were to look at it, could  
 21 reasonable minds differ on the bullets because of the lack  
 22 of characteristics that you found?

23       A. The fewer characteristics, the more likely -- the  
 24 harder it is to make an identification, and it is possible  
 25 that someone else may have identified those.

1       Q. With maybe finding something different or a  
 2 different experience or just that's a closer call, I  
 3 guess, than how obvious the casings were?

4       A. Right. There's a number of factors, you know, if  
 5 you're using the same microscope, lighting, experience.  
 6 There's -- it's -- there's a number of factors that could  
 7 play into that, yes.

8       Q. Okay. And as far as these particular Hi-Points,  
 9 not necessarily being a cheap weapon, but you said  
 10 something about the amount of usage of the weapon would  
 11 make a difference on how good of a mark it would make on  
 12 the bullets; is that correct?

13       A. That's one of the possible reasons a projectile  
 14 may not mark well.

15       Q. If a gun had been used a lot, would it mark  
 16 better or less, you think?

17       A. I haven't read any studies or done any work  
 18 myself, but I would surmise that it would probably mark a  
 19 little worse.

20       Q. Okay. Which means not as --

21       A. Not as well.

22       Q. Not as well. Okay. And so any kind of damage,  
 23 I guess, to the interior of the gun, whether it's a  
 24 worn firing pin, might make a difference on the shell  
 25 casings?

160       A. That's true.

1       Q. Okay. And so if a weapon -- like whenever you  
 2 were competitively shooting, did you take a lot of good  
 3 care of your weapons?

4       A. Yes, I did.

5       Q. I mean, did you clean them after every use and  
 6 that sort of thing and maintain them?

7       A. Yes.

8       Q. Were you careful with them?

9       A. Yes.

10       Q. Did you generally keep them in cases so that they  
 11 would not get damaged?

12       A. Yes, I did.

13       Q. Do you think those weapons would have marked  
 14 really well?

15       A. I can't say how well they would mark. It would  
 16 depend on a lot of factors, but I did take good care of  
 17 them, yes.

18       Q. Okay. And so if a weapon was used a lot,  
 19 banged around or dropped, or was just old, do you think  
 20 it would mark as well as a brand new, pristine, nice  
 21 weapon?

22       A. It would depend on manufacturer and a lot of  
 23 other things.

24       MR. STRAHAN: I'll pass the witness.

## 1 FURTHER RECROSS-EXAMINATION

2 BY MR. WESTFALL:

3 Q. So that's what I guess I -- my assumption was  
 4 that maybe you make conservative, more conservative  
 5 opinions than some other labs might, but I guess what --  
 6 there could be a reasonable disagreement. You could look  
 7 at a bullet and someone else could look at a bullet. They  
 8 could see a match and you would say, for me personally,  
 9 I'm not going to call it a match?

10 A. That's correct.

11 MR. WESTFALL: Okay. I get it. All right.

12 Thank you so much.

## 13 FURTHER REDIRECT EXAMINATION

14 BY MR. STRAHAN:

15 Q. And by the same token, you could see one and say,  
 16 "I see enough here to say that it's definitely not a match  
 17 as well", correct?

18 A. That's correct.

19 Q. I mean, you could do both. And where you were on  
 20 all the bullets in this case, including the two that you  
 21 test fired, was not enough markings for you to  
 22 conclusively say one way or the other?

23 A. That's correct.

24 Q. However, every single casing --

25 MR. WESTFALL: Object to leading.

1 rather than trying to cram something else in in the  
 2 afternoon.

3 The Court will again remind you that it's  
 4 very important that you pay close attention to all the  
 5 rules that I've read you at the beginning of this trial  
 6 and that I've reminded you of every evening, and that is  
 7 that you absolutely must not review or read any report of  
 8 this case in any media, whether it's on the Internet,  
 9 whether it's in the newspaper, whether it's on the radio  
 10 or the TV, and that you should not discuss this case with  
 11 anyone, not even your spouse. And that's a very  
 12 particularly difficult thing to do, but you're just going  
 13 to have to say, "I'm taking the weekend off and I'm not  
 14 going to talk about it right now. Maybe someday when this  
 15 is over I can talk about it." And go on and enjoy your  
 16 family and loved ones for the weekend, and come back here  
 17 and be ready to go Monday morning at the same time.

18 So with that, I can excuse you at this time.

19 And thank you for your attention this week.

20 (Court adjourned.)

21

22

23

24

25

1 Q. What was the result of every single casing that I  
 2 have on that board with relation to that particular  
 3 handgun?

4 A. All the casings on the board were fired from the  
 5 Fort Worth -- sorry, from the Hi-Point firearm.

6 MR. STRAHAN: Okay. Thank you. I'll pass  
 7 the witness.

8 MR. WESTFALL: I'm not going to ask anymore  
 9 questions, Judge.

10 THE COURT: May the witness be excused?

11 MR. STRAHAN: Yes. Thank you.

12 MR. WESTFALL: She may.

13 THE COURT: Thank you.

14 We'll take a 15-minute recess.

15 (Recess taken from 3:20 to 3:31 p.m.)

16 (Jury present.)

17 THE COURT: You may be seated. Ladies and  
 18 gentlemen, I've reviewed the trial schedule and the  
 19 progress with the attorneys, and I'm pleased with the  
 20 progress that we're making and we're on track to being --  
 21 we've completed a good portion of the work this week. And  
 22 we do have probably another two weeks, plus or minus a few  
 23 days, for everybody to have time to present everything  
 24 that you need to hear. So with that, it's appropriate to  
 25 recess for the weekend at this time at 3:30 on Friday

1 THE STATE OF TEXAS )

2 COUNTY OF JOHNSON )

3 I, Pamela K. Waits, Official Court Reporter  
4 in and for the 413th District Court of Johnson County,  
5 State of Texas, do hereby certify that the above and  
6 foregoing contains a true and correct transcription of all  
7 portions of evidence and other proceedings requested in  
8 writing by counsel for the parties to be included in the  
9 volume of the Reporter's Record, in the above-styled and  
10 numbered cause, all of which occurred in open court or in  
11 chambers and were reported by me.

12 I further certify that this Reporter's Record  
13 of the proceedings truly and correctly reflects the  
14 exhibits, if any, admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 31 day  
16 of December 2012.



17  
18 Pamela K. Waits, Texas CSR #4991  
19 Expiration Date: 12/31/13  
20 Official Court Reporter  
21 413th Judicial District  
22 Johnson County, Texas  
23 204 S. Buffalo Avenue  
24 Cleburne, Texas 76033  
25 (817) 556-6041

1 REPORTER'S RECORD

2 VOLUME 43 OF 75 VOLUMES

3 TRIAL COURT CAUSE NO. F45059

4 COURT OF CRIMINAL APPEALS NO. AP-76,768

5 STATE OF TEXAS ) IN THE DISTRICT COURT

)

6 VS. ) JOHNSON COUNTY, TEXAS

)

7 MARK ANTHONY SOLIZ ) 413TH JUDICIAL DISTRICT

8

9

10 JURY TRIAL

11

GUILT/INNOCENCE PHASE

12

13

14

15

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17

On the 5th day of March, 2012, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable William C. Bosworth,  
Jr., Judge presiding, held in Cleburne, Johnson County,  
Texas:

22

Proceedings reported by Machine Shorthand and

23

Computer-Aided Transcription. **FILED IN**

**COURT OF CRIMINAL APPEALS**

**ORIGINAL**

24 JAN 22 2013

25

Abel Acosta, Clerk

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1 PROCEEDING  
 2 (Open court, Defendant present;  
 3 Jury not present.)  
 4 THE COURT: Is the State ready to proceed?  
 5 MR. STRAHAN: Yes, sir.  
 6 THE COURT: Defense present and ready?  
 7 MR. WESTFALL: Yes, Your Honor.  
 8 THE COURT: Defendant present?  
 9 MR. WESTFALL: He's here.  
 10 THE COURT: Jury ready?  
 11 THE BAILIFF: Yes, sir.  
 12 THE COURT: You may bring them in.  
 13 (Jury present.)  
 14 THE COURT: Thank you. You may be seated.  
 15 Please call your next witness.  
 16 MR. CHAMBLESS: State calls Deputy Truitt,  
 17 Johnson County Sheriff's Office.  
 18 THE COURT: Come all the way around here.  
 19 Please raise your right hand.  
 20 (Witness sworn.)  
 21 THE COURT: Thank you. Have a seat.  
 22 MR. CHAMBLESS: You might pull the microphone  
 23 to where you can speak into it in front of you there.  
 24 Thank you.  
 25

8  
 1 individuals incarcerated in the jail up here to the  
 2 courthouse to speak with their attorneys and to do  
 3 whatever they needed to do. We also transported to the  
 4 T.D.C. units. We bench-warranted back from the T.D.C.  
 5 units. We did mental health commitments.  
 6 Q. Variety of duties?  
 7 A. A variety of duties.  
 8 Q. So you first worked there, then the school  
 9 resource officer, and then the last few years you've been  
 10 on patrol?  
 11 A. Yes.  
 12 Q. Okay. And how does patrol work? Are there a lot  
 13 of deputies out on patrol at a given time in Johnson  
 14 County?  
 15 A. We have more officers on duty basically during  
 16 the first two shifts than we do deep nights, but we have  
 17 an overlapping shift now which really helps out a lot too.  
 18 Q. You say "deep nights". What hours does that  
 19 cover?  
 20 A. Presently it covers from 10:45 until 8 in the  
 21 morning.  
 22 Q. Okay. So are you saying that's the shift that  
 23 has the least staffing for the Sheriff's Department?  
 24 A. A lot of times.  
 25 Q. Okay. Now, back on June 30th of 2010, were you

9  
 1 CYNTHIA TRUITT,  
 2 Having been first duly sworn, testified as follows:  
 3 DIRECT EXAMINATION  
 4 BY MR. CHAMBLESS:  
 5 Q. Please state your name.  
 6 A. Cynthia Truitt.  
 7 Q. And, Ms. Truitt, what is your occupation?  
 8 A. I'm a patrol officer for the Johnson County  
 9 Patrol Division.  
 10 Q. How long have you worked as a patrol officer?  
 11 A. Four years now.  
 12 Q. Okay. And are you a certified peace officer?  
 13 A. Yes, sir.  
 14 Q. And has that been your duties throughout your  
 15 time with Johnson County Sheriff's Department?  
 16 A. No. I've held other positions.  
 17 Q. What are they?  
 18 A. Started out Transport Division for three years,  
 19 worked as an S.R.O. Since then, I've been in Patrol.  
 20 Q. S.R.O., what's that?  
 21 A. School Resource Officer.  
 22 Q. Okay. Transport is, well, maybe obvious, but  
 23 just tell us what that involves.  
 24 A. Well, I worked Transport Division. It was  
 25 basically working with the jail. We brought those

11  
 1 working as a patrol officer for the Johnson County  
 2 Sheriff's Department?  
 3 A. Yes, sir.  
 4 Q. And did you receive an assignment from, I guess,  
 5 dispatch or from some other source to go to a residence in  
 6 Godley, Texas?  
 7 A. There initially had been a call dispatched to  
 8 back up a Godley officer.  
 9 Q. Okay.  
 10 A. For agency assist.  
 11 Q. What time are we talking about in the morning,  
 12 approximately?  
 13 A. This was right at that over -- hour overlapping  
 14 shift change. And so I was just coming off shift, but it  
 15 came in and I was close and I went ahead and took it.  
 16 Q. Okay.  
 17 A. The Godley unit came back on and advised, I  
 18 guess, myself or dispatch that that was not going to be  
 19 the address that we needed to go to, we needed to go out  
 20 on FM 2331 at -- I don't remember the exact address.  
 21 Q. All right. Was it 14356 FM 2331?  
 22 A. That sounds right.  
 23 Q. All right. We've heard from Detective Cedillo of  
 24 the Fort Worth Police Department that he and another  
 25 officer, Detective Pate, were already there?

1 A. Yes.  
 2 Q. And when you got to the residence in Godley, were  
 3 they there?  
 4 A. Yes, they were. They were outside the gate at  
 5 the roadway.  
 6 Q. What happened when you first arrived?  
 7 A. When I first arrived, they told me what was --  
 8 what they felt was going on, that the elderly female that  
 9 lived at that residence had been shot and killed by two  
 10 people or shot and robbed by two people that they had  
 11 apprehended the day before.  
 12 Q. Okay. And so what did you and Detectives Cedillo  
 13 and Pate do at that time?  
 14 A. I got my latex gloves. We went onto the property  
 15 by foot. I asked them to go ahead and check the front of  
 16 the house, and I checked the garage because the garage  
 17 door was up.  
 18 Q. Okay.  
 19 A. We met again at the end of the garage, and they  
 20 advised me that they saw an open door on the back of the  
 21 house.  
 22 Q. Okay. So they had gone to the front of the  
 23 house; you went to the garage?  
 24 A. Right.  
 25 Q. And then the three of you met somewhere around

13  
 1 the garage?  
 2 A. Right. At the end of the garage.  
 3 Q. Then what happened?  
 4 A. They told me that they had seen an open door on  
 5 the back of the house, so we went through the cyclone --  
 6 the gate for the cyclone fence there and saw the open  
 7 door.  
 8 Q. Now, the Jury has seen a lot of photographs of  
 9 the layout of the house. Is there a pool as you go  
 10 through the gate on the --  
 11 A. Yes.  
 12 Q. -- right side?  
 13 A. As you go through the gate, there's a pool kind  
 14 of in front of to the right, and then on the left-hand  
 15 side is the covered patio where the back door is.  
 16 Q. All right. Did you and the other two officers go  
 17 to the covered patio area?  
 18 A. Yes.  
 19 Q. All right. Now, as you were there at that time,  
 20 just tell us, and very slowly, tell us what your -- you  
 21 did, what your impressions were, and so on.  
 22 A. I advised them that with an open door, we're  
 23 going to go in the house.  
 24 Q. Okay.  
 25 A. I was the first one in. I announced myself,

12  
 1 "Sheriff's Office", two to three times before I made  
 2 entry.  
 3 Q. Okay.  
 4 A. I looked around.  
 5 Q. What was the first thing you saw when you walked  
 6 in?  
 7 A. I'd never been in the house before, so when I --  
 8 first thing that I noticed was everything was all  
 9 cluttered.  
 10 Q. Okay.  
 11 A. Or messy. We all have our own definition of it,  
 12 but things weren't right.  
 13 Q. All right.  
 14 A. I walked pretty much straight through and was  
 15 glancing around, listening, just in case there was someone  
 16 there. And when I walked toward the front of the house, I  
 17 saw a white female lying face down between a chair, a  
 18 table, with her head close to the wall.  
 19 Q. Okay. And what was her condition?  
 20 A. When I approached her and bent over her to try to  
 21 check for signs of breathing, something to tell me that  
 22 she might still be alive, I didn't see any. I bent over  
 23 her and I saw a huge pool of blood under her -- under her  
 24 face or under her head.  
 25 Q. Did you see any signs that she was breathing or

15  
 1 still alive?  
 2 A. No, sir, I didn't.  
 3 Q. Okay. What happened then?  
 4 A. As soon as I was sure that there weren't any  
 5 signs of life, I backed away from her, almost stepping on  
 6 the shell casing that had been on a rug there kind of  
 7 close to her, and I backed away from that, turned around  
 8 and walked out the back door and contacted my sergeant.  
 9 Q. Is that -- you're talking you, but is that  
 10 collectively all three of you?  
 11 A. It would have been -- I'm not real sure how close  
 12 to me they were, although they did see the shell casing  
 13 too because I had almost stepped on it, and I'm not sure  
 14 which one did, but they warned me, "Look out, there's a  
 15 shell casing".  
 16 Q. Okay. And so did the three of you leave the  
 17 house?  
 18 A. Yes.  
 19 Q. And where did you go?  
 20 A. I called my sergeant there on the back patio, and  
 21 then the three of us walked back off the property and  
 22 closing the gates as we went, and waited.  
 23 Q. Okay. And why did you wait? What's the reason  
 24 for that?  
 25 A. We had to close the -- I had to close the crime

1 scene so that my shift sergeant could contact all the  
2 admin that he needed to contact.

3 Q. Okay. Is it the procedure or the process,  
4 protocol that's followed that no one enter the crime scene  
5 until other detectives or officers assigned with that  
6 responsibility --

7 A. Yes.

8 Q. -- get there? Is that --

9 A. That is, that is the policy.

10 Q. Is that what you had in your mind?

11 A. Yes.

12 Q. And is that what you did until others arrived  
13 from the --

14 A. That's what we did.

15 Q. Okay. I'll show you a photograph that's marked  
16 State's Exhibit 227. Do you recognize what's shown here?

17 A. Yes.

18 Q. What is -- what is shown here?

19 A. This is where I walked up into the other room and  
20 found the white female lying.

21 Q. Is this the position that she was in and is this  
22 basically exactly what you saw when you walked in?

23 A. Yes. There's more detail than what I actually  
24 saw because I had left my flashlight in my car and the  
25 house was kind of dim.

17 1 Q. Is that the position of Ms. Weatherly's body when  
2 you got there?

3 A. Yes, it is.

4 Q. Okay. If you would look just at the very edge of  
5 the photograph, do you see an item there?

6 A. That's that shell casing.

7 Q. All right. And is that just on the rug a few  
8 feet or apparently a few feet from her body?

9 A. It's just a few feet from her body.

10 MR. CHAMBLESS: Okay. Offer 227 at this  
11 time.

12 MR. WESTFALL: Your Honor, 403, substantially  
13 more prejudicial than probative and cumulative.

14 THE COURT: Objection is overruled. 227 is  
15 admitted.

16 (State's Exhibit No. 227 admitted.)

17 MR. CHAMBLESS: Pass the witness.

18 MR. WESTFALL: No questions.

19 THE COURT: May the witness be excused?

20 MR. WESTFALL: She may.

21 MR. CHAMBLESS: Yes, sir.

22 THE COURT: Thank you. You may be excused.  
(Witness excused.)

23 THE COURT: Please raise your right hand.  
(Witness sworn.)

1 THE COURT: Please have a seat.

2 BRANDON BLANSIT,

3 Having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CHAMBLESS:

6 Q. Please state your name.

7 A. Brandon Blansit.

8 Q. And, Mr. Blansit, what is your occupation?

9 A. I'm a police officer for the City of Mansfield.

10 Q. Okay. How long have you been a police officer?

11 A. Going on seven and a half years. This will be my  
12 -- going on my eighth year.

13 Q. Okay. What are your current duties?

14 A. Patrol, also included crime scene work and  
15 negotiations. And I've recently taken on the task of  
16 becoming a coordinator for a crime-free multi-housing  
17 program.

18 Q. In June, specifically June 30th of 2010, did you  
19 have crime scene responsibilities as part of your duties  
20 with Mansfield Police Department?

21 A. I did, sir.

22 Q. And what kind of training have you received in  
23 that area?

24 A. Related to crime scene training alone, quite a  
25 bit actually. I've gone through a -- an accredited

17 1 program through Sirche Laboratory, fingerprint  
2 laboratories in North Carolina.

3 THE REPORTER: I'm sorry?

4 A. Sirche Laboratories, fingerprint laboratories.  
5 It's a company that specializes in equipment that is  
6 brought to the crime scene, forensics world, if I would  
7 use that word. During that class, you learn the theories  
8 behind fingerprint development, the different tools that  
9 are used to develop fingerprints and collect evidence.

10 Q. Okay. And is there another, I guess, crime scene  
11 or maybe more than one other crime scene person that you  
12 work with in Mansfield Police Department?

13 A. Yes, there is two. At the time of this case on  
14 June 30th, I worked with Max Courtney. Here recently over  
15 the last year we've hired a secondary or a third one now,  
16 and her name is Courtney as well.

17 Q. Okay. Now, on June 30th, 2010, approximately  
18 9:00, did you and Max Courtney receive a call or a request  
19 to go and work on a crime scene?

20 A. We did.

21 Q. All right. And where -- were you asked to go to  
22 14356 FM 2331, a location of a house in Johnson County?

23 A. Yes, sir.

24 Q. Okay. Did you leave together with Max or  
25 separately?

1 A. No, Max left prior to me. He called me, and I  
 2 responded to the police department, gathered necessary  
 3 equipment that I think that we would need, and I responded  
 4 separately.

5 Q. Now, what kind of equipment did you bring with  
 6 you?

7 A. Well, we have equipment that is pretty well  
 8 gathered altogether, all within -- contained in a box  
 9 or -- it includes fingerprint brushes, tapes. It includes  
 10 different collection vials, boxes. Could be a number of  
 11 things. Different types of powders. There's a number of  
 12 things. Tweezers to collect, you know, small trace  
 13 evidence collections, bags, paper bags.

14 Q. Okay. So you had a number of items with you and  
 15 you were going there with the intention of assisting  
 16 Johnson County in evaluating, processing this potential  
 17 crime scene; is that correct?

18 A. Yes, sir.

19 Q. All right. Approximately what time did you get  
 20 there at that location?

21 A. 10 -- about 10:30. 10:48, I believe, is what  
 22 time I checked in on the crime scene log.

23 Q. What was the first thing that you did or as you  
 24 go through your thought process and, I guess, later  
 25 documented what you did, what was -- kind of walk us

21 1 through your mental journey as you begin this.

2 A. Okay. When we respond to crime scenes, obviously  
 3 the most important part is to preserve and protect any  
 4 physical evidence that is at the scene. It also includes  
 5 the physical evidence that is outside of your scene, as  
 6 far as outside of a residence.

7 When I first arrive on scene, one of the  
 8 first things I do is that I establish a location of where  
 9 I'm going to park my vehicle, to where I'm going to set up  
 10 my -- as we kind of would refer to it as a command post.  
 11 While I'm looking for these areas, I'm ensuring that I'm  
 12 not going to disturb or, you know, inadvertently damage or  
 13 destroy any type of evidence that might be there.

14 On this case in particular, Max showed up  
 15 prior to me. He had already found a designated area as to  
 16 where the vehicles were going to be parked at. He  
 17 conducted a search of that area, so I didn't necessarily  
 18 have to worry about that on this case. Max had already  
 19 taken care of it.

20 As we're walking up to a scene, we obviously  
 21 are observing everything and, you know, the case in whole.

22 Q. All right. Describe just generally from the  
 23 outside what you were looking at.

24 A. There's a residence. It's somewhat atop a hill  
 25 on a large acre of land, I would say maybe 10 or 15

20 1 acres. The residence is mostly constructed of brick.  
 2 It's got wood siding on it. It's somewhat of a larger  
 3 house. It's secured by a fence. It has an internal  
 4 fence, and also has a couple of flag poles that were out  
 5 in front of the house as well.

6 Q. Okay. Now, as part of your work, did you and/or  
 7 Max Courtney develop a sketch or a diagram of the inside  
 8 of the residence?

9 A. There was a sketch, yes.

10 Q. Okay.

11 A. There is a sketch.

12 Q. I want to show you what's marked as State's  
 13 Exhibit 228 and ask you to look at that and if you  
 14 recognize that or not.

15 A. Yes, I do.

16 Q. What is State's Exhibit 228?

17 A. This is a final sketch of the residence.

18 Q. All right. Is this a sketch of the inside of the  
 19 Nancy Weatherly home there at 14356 FM 2321?

20 A. Yes.

21 Q. And does it show the layout of the garage, the  
 22 living room, kitchen and the bedrooms?

23 A. Yes.

24 Q. And do you think this is -- was it helpful to you  
 25 in your work to make a sketch like this?

21 1 A. Yes, it is.

2 MR. CHAMBLESS: All right. Thank you.

3 MR. WESTFALL: No objection to 228, Your  
 4 Honor.

5 THE COURT: 228 is admitted.

6 (State's Exhibit No. 228 admitted.)

7 Q. (BY MR. CHAMBLESS) I want to jump ahead just a  
 8 little bit and come back to where we are. I'll show this  
 9 on the overhead here. Can you see it?

10 A. It's much larger on my screen than -- okay. We  
 11 are looking at the same thing actually. Yes, we're good.

12 Q. All right. I will start at this end where the  
 13 garage is. Just is this -- does this demonstrate or show  
 14 the layout, let's see, east, west, north, south? Do you  
 15 have -- well, I think it would be more helpful to maybe  
 16 start here.

17 A. Yes.

18 Q. Okay. This shows three bedrooms, so I guess that  
 19 gives us an orientation. The east side is on the right,  
 20 west side on the left, north up to the top of the house;  
 21 is that correct?

22 A. Yes, that accurately depicts that, yes.

23 Q. And then with the northeast bedroom, there is a  
 24 bathroom accessible from that bedroom; is that correct?

25 A. That is.

1 Q. And it shows the different closets for each  
2 bedroom?

3 A. Yes.

4 Q. Then there is a main hallway. And coming, going  
5 south, I guess, we come into the dining room and living  
6 room area. Now, how many doors, outside doors are there  
7 of this house?

8 A. On the exterior walls of the house?

9 Q. Yes.

10 A. There -- well, including the two double doors at  
11 the back door, a total of three.

12 Q. Okay. The -- this is the back door or the two  
13 double doors you just referred to?

14 A. Yes, sir.

15 Q. And this would be the front door?

16 A. Yes, sir.

17 Q. Okay. And then there's also, I guess if the --  
18 if the garage is open, an entryway from the garage?

19 A. Yes.

20 Q. Okay. And so the dining area, living room, and  
21 then there's access --

22 A. -- to the garage.

23 Q. -- to the garage, this door, and if it's open,  
24 storage area, utility room. Okay.

25 Did you make any observations as you

25 1 approached the house, again, walking us through your  
2 mental process as you began to go from the -- I think the  
3 parking area towards the house?

4 A. The driveway is a dirt, gravel driveway. There  
5 were some wet areas as I walked up to the driveway from  
6 recent rainfall that we had had. Outside, I didn't really  
7 notice anything that was irrelevant -- or relevant to the  
8 case, with the exception of some, I believe, some tire  
9 tracks that Max had already excluded from -- from the  
10 case. Nothing, nothing that was real relevant to the case  
11 on the outside of the house.

12 Q. Okay. And tell us then about the house itself  
13 and just your personal observations in the house before  
14 you began to do any processing.

15 A. Are we talking about the outside of the house or  
16 the inside?

17 Q. Well, first the outside.

18 A. The outside of the house. On the outside of the  
19 house, it was a well-kept residence. It seemed that  
20 someone did care for the residence. There was a pool that  
21 was on the -- I guess that would probably be the southeast  
22 side of the house with a pool house that was fenced in. I  
23 remember noting that the pool was -- was taken care of as  
24 well. There were some items on the back porch that  
25 included a cat bowl; looked like it had some cat food in

1 it. I do remember there being a cat at one time around  
2 the house. The exterior of the house was, like I said,  
3 pretty well kept up and clean.

4 Q. Okay. Were there any animals present on the  
5 outside of the house?

6 A. There were some animals, yes. Going back to the  
7 size of the residence or the lot, there was enough there  
8 to contain a donkey, a couple horses, I believe. I don't  
9 recall really if she had any cows, but a couple horses and  
10 a donkey, I do recall them being there.

11 Q. Okay. Begin, as you think back on it, with your  
12 observations and when you entered the Nancy Weatherly  
13 home. Kind of walk us from that beginning part.

14 A. The designated entry point for this residence, we  
15 established it at the back door where you see the two  
16 double doors. In any crime scene, we try to designate a  
17 entrance and exit to where anyone that comes in has to  
18 come in through that one door; anyone that exit has to go  
19 out through that same -- same entrance.

20 Q. Okay.

21 A. We established that our entrance and exit was  
22 going to be at the back door. When we walk in, obviously  
23 you can see the -- this diagram that we have here, you  
24 walk into the larger area of the living room, the dining  
25 room and the kitchen. As I noted, these rooms were pretty

25 1 well contained altogether. There wasn't much separation  
2 between these rooms. If one walked into the living room,  
3 he could easily have access to the dining room and to the  
4 kitchen. Everything was in view, including the furniture,  
5 the dining room table, and even some parts of the kitchen.

6 Q. What was the condition of the living room area?

7 A. The condition of the living room area was pretty  
8 well in complete disarray. It was what would be referred  
9 to as ransacked or tossed. The cushions were knocked off  
10 of the couches. There were several things that it just  
11 appeared that had been disturbed.

12 Q. Okay. Did you see, as you walked in, were you  
13 able to see Nancy Weatherly?

14 A. Yes.

15 Q. And where was she and what was her -- how was she  
16 situated in the -- in the home?

17 A. Ms. Weatherly was positioned on the -- it would  
18 be on the south side of the table, I believe. Do we have  
19 the...

20 Q. Yes.

21 A. May I show you this? If you want to look at  
22 that.

23 Q. Okay. Show you what's marked State's Exhibit  
24 229. Do you recognize this?

25 A. I do, sir.

1 Q. And what is added or different about 229 and what  
2 is 229?

3 A. This is, again, a final sketch of the residence.  
4 This includes furniture, bedroom furniture, sinks and  
5 kitchens and bathtubs. It includes positions of the  
6 furniture and then shows -- we do have that one up there  
7 as well. This is including the furniture.

8 MR. CHAMBLESS: Okay. Thank you.

9 Offer 229.

10 MR. WESTFALL: No objection, Your Honor.

11 THE COURT: Admitted.

12 (State's Exhibit No. 229 admitted.)

13 Q. (BY MR. CHAMBLESS) Okay. I'm trying to focus  
14 from the -- or focus on the living room and the dining  
15 room area. Let's see here. Is that where the focus is on  
16 this now? Can you see?

17 A. Yes, sir. Yes, I can see it.

18 Q. All right. Is this the back door that you  
19 referred to?

20 A. Yes, sir.

21 Q. And this would be the -- what area would this be?

22 A. The dining room area.

23 Q. All right. And the area down here, what is this?

24 A. I believe you're pointing, the living room area.

25 Q. Okay. Where was Ms. Weatherly?

1 that it was, I guess, ransacked or tossed. You see the  
2 body of Nancy Weatherly there by the dining table. Walk  
3 us through other things that you saw in the different  
4 rooms that you were in.

5 A. The kitchen, there wasn't much disturbance  
6 there. I found a pill organizer that was atop one of  
7 counter tops, and I believe it was -- I can't recall  
8 without looking at notes as to what day was missing, but  
9 there were some pills in the pill organizer. I believe  
10 there was some food in a sink. But, generally speaking,  
11 the kitchen was -- didn't appear disturbed as the living  
12 room or other rooms within the house.

13 As we move on -- would you like for me to  
14 continue?

15 Q. Yes. And this would be the hallway --

16 A. Yes.

17 Q. -- going past the kitchen area?

18 A. Yes. Going into the hallway, the only thing that  
19 I did note in the hallway was the thermostat for the air  
20 conditioner. It was -- I believe it was set on 72  
21 degrees, and it was 70 degrees in the household, if I  
22 remember right.

23 Q. All right.

24 A. If you continue, you can go into a guest  
25 bathroom.

1 A. At the dining room table, see where the chair is  
2 kicked out, the chair on the south side? That would be  
3 the south side of the table.

4 Q. Okay.

5 A. She was laying in between the chair and the table  
6 on the floor.

7 Q. All right. Was she -- what was the position of  
8 her body?

9 A. Her face, her head was pointing -- that would be  
10 toward the -- toward the north -- toward the west. Her  
11 legs were pointed toward the east. She was laying on her  
12 stomach with her face toward the north side of the house.

13 Q. What was she wearing?

14 A. She had on a multicolored pajama bottom pants  
15 with a white T-shirt.

16 Q. Okay. Was there any -- anything on her feet that  
17 you recall?

18 A. No.

19 Q. Did you see any apparent or visible injuries  
20 about her body as she lay there?

21 A. Yes.

22 Q. And what was -- what did you see?

23 A. There was an apparent bullet defect at the crown  
24 of the head.

25 Q. Okay. Now, you told us about the living room,

1 Q. All right. This would be a bathroom just to the  
2 right and behind the kitchen; is that correct?

3 A. That is correct, yes.

4 Q. What did you notice, if anything, about the  
5 bathroom?

6 A. This bathroom didn't appear disturbed. When we  
7 work crime scenes, we do process bathrooms, including  
8 toilets. This toilet was processed. The sink was  
9 processed. I observed the bathroom -- or the bathtub.  
10 The bathtub had some dead crickets in it as if it's  
11 probably not a used bathroom.

12 Q. Okay. Now, there are three bedrooms. And on the  
13 other diagram you've referred to northeast, northwest and  
14 west bedroom; is that correct? This would be the  
15 northeast?

16 A. Yes, yes.

17 Q. The northwest --

18 A. Northwest.

19 Q. -- and west?

20 A. Yes, sir.

21 Q. Walk us through. I guess this would be the  
22 master bedroom here?

23 A. That is the master bedroom.

24 Q. All right. What did you see when you walked in  
25 there?

1 A. The room was, again, ransacked. The mattress to  
 2 the bed, as you can see the bed here, was tossed over to  
 3 the -- that would be toward the north side of the house or  
 4 toward the outside wall. In the bathroom, I checked that  
 5 bathroom as well, it seemed to be irrelevant to the case.  
 6 I didn't find anything significant in the bathroom.

7 In the closet, if you'll slide it up just a  
 8 little bit, there's an entrance to the closet here where  
 9 the door swings outward. In the closet, this one piece of  
 10 furniture inside the closet at -- against the north wall  
 11 right there, some drawers were pulled out on that. There  
 12 was quite a few pair of shoes in there. It didn't appear  
 13 that anything else had really been disturbed in that  
 14 closet.

15 On the north wall as well, that piece of  
 16 furniture there, the drawers were pulled out on it and  
 17 several miscellaneous items thrown into the floor. Same  
 18 thing with the nightstand on the north side of the bed,  
 19 things were pulled out of it and thrown into the floor.

20 The pillows, it shows there to be some  
 21 pillows on the sketch there in the bed. There were  
 22 pillows stacked against the south wall just prior to  
 23 entering into the bathroom. They appeared neatly, neatly  
 24 stacked against the wall. Also with the bed, the sheets  
 25 on the -- this would be the south side of the bed, the

32 1 Q. All right. Now, Officer Blansit, if you would,  
 2 let's go to this, the bedroom opposite, I guess one of the  
 3 available bedrooms here, the northwest side, the west  
 4 side, north side of the house.

5 A. Uh-huh.  
 6 Q. What observations, what did you see?  
 7 A. These observations were pretty well consistent  
 8 with the same observations that I saw in the master  
 9 bedroom. The mattress was tossed. It appears that  
 10 somebody was attempting to locate something underneath a  
 11 mattress. The drawers in the nightstand beside the bed  
 12 were pulled out. Again, the drawers on the dresser across  
 13 the hall were pulled out. I'm sorry?

14 Q. Okay.  
 15 A. Yes. That is a double opening door for a  
 16 closet. It didn't appear disturbed, didn't appear that  
 17 anything was pulled out. There were some picture frames  
 18 in there. There was a smaller TV that I don't necessarily  
 19 believe was -- was involved.

20 Q. Now, the final bedroom is what you -- on the  
 21 other sketch has been labeled the "west bedroom", and tell  
 22 us what you saw here, if anything is significant.

23 A. This room kind of appeared to me as more of a --  
 24 of a storage room for her. I saw a treadmill, some boxes  
 25 that were filled with -- filled with clutter is what it

33 1 sheets were pulled back on the bed but no sheets were  
 2 pulled back on the right side.

3 Q. Okay. Was there any apparently obviously missing  
 4 items in this bedroom?

5 A. Yes.

6 Q. And what was that?

7 A. Right in front of the bed, the piece of furniture  
 8 seen there was a small entertainment center. On top of  
 9 that you could see -- if you could imagine where you have  
 10 your TV at your home and when you go to clean around your  
 11 area, if you lifted your TV up, you would see that there's  
 12 no dust imprints or no dust settled around where your TV  
 13 was actually laying at.

14 Here, this is what I observed. I observed  
 15 that there was a base to what I believe was a TV that had  
 16 been removed off of the stand. I found a R.C.A. manual  
 17 that was laying there. 32-inch, I believe is what it was.

18 Q. Was there also -- was there any indication of a  
 19 cable connection in that area; do you recall?

20 A. I do not recall about cable connection. I'd have  
 21 to probably look at my notes, but I don't recall.

22 Q. All right. Anything else about the master  
 23 bedroom, the northeast bedroom, that you recall?

24 A. With the exception of a blood stain that was  
 25 found on the bed that -- that we looked at, nothing else.

1 appeared as. In addition to that, the closet was open.  
 2 Inside the closet it had plastic totes that were filled  
 3 with miscellaneous items.

4 Laying right out in front of the closet on  
 5 the floor, I saw what I believe is a older cassette tape  
 6 or cassette tape holder. The cassette tape holder has  
 7 metal latches on it, is what secures it. The latches were  
 8 open. And the cassette tape was laying more or less right  
 9 in the entry of the door.

10 Q. Okay. Let's go down now to the next sequence,  
 11 and would that be the actual processing of the crime scene  
 12 and where you begin and go to different locations and you  
 13 do that work?

14 A. That's correct.

15 Q. Okay. Talk about the back door, the entrance at  
 16 the back door, and what you did, if anything, about  
 17 processing and collecting of evidence from that point  
 18 specifically.

19 A. At the back door, numerous law enforcement  
 20 personnel and people had entered and exited this door. I  
 21 ruled that door out as far as being processed due to --  
 22 due to the possibilities of contamination in that door.  
 23 So the door itself was not processed, just based on the  
 24 entrance and exits that had been made in that area.

25 Q. Okay.

1 A. And, again, right there in that area of the  
2 walkway for any kind of shoe wear impressions.

3 Q. As you go into the back door, past the back door,  
4 what activities did you -- what did you look at and what  
5 did you do at that point?

6 A. Coming into the back door, you're obviously  
7 looking for the things that we had mentioned earlier,  
8 signs of disturbances, signs of forced entry, anything  
9 that would lead one to believe that either one has been  
10 handled or suspected to have been handled.

11 If you look right here at the two double  
12 doors, there's two pieces of furniture. Those are showing  
13 a table, and then right beside the table here on the --  
14 that would be on the west side, is a small chest. I saw  
15 that the chest had been opened. Things were thrown about  
16 in the area of the chest. That was processed with black  
17 powder. It's a fingerprint powder to try to develop any  
18 kind of fingerprints.

19 Q. What was the result of that?

20 A. There was no fingerprints developed.

21 Q. Okay. Was there an item inside the chest that  
22 you looked at specifically?

23 A. Yes, there was -- there was a tray and a photo  
24 case, a photo case is what I believe it was or an album  
25 case that did have a smooth process or smooth surface on

1 transfer these, these impressions over. And, you know,  
2 it's not always just that easy just to transfer a  
3 fingerprint. There's some times you just do not transfer  
4 that substance from your skin to the surface.

5 Q. I guess what I'm thinking, and I'm asking you if  
6 you would think the homeowner had handled this a lot of  
7 times, and here you're saying there had been apparent  
8 movement. Why is it that you're not seeing latent prints  
9 everywhere?

10 A. Well, and latent prints are primarily made up of  
11 about 95 percent of water. When you transfer these oils  
12 and these substances, about 95 percent of them are water,  
13 and you're only really dealing with about, you know, 5  
14 percent of the oils. Different environments could dry  
15 these oils up to where they just do not develop.  
16 Different substance -- or surfaces do just not take the  
17 transfers of the oils to where either, one, they absorb  
18 into the actual surface itself to where you have to  
19 possibly use a different type of method that -- a chemical  
20 method that could be used to bring those prints out of the  
21 surfaces. I mean, a number of things could occur as far  
22 as the environmental -- environment that these  
23 fingerprints are in to where the oils could simply dry up  
24 or be disturbed or, as I said, a number of things can  
25 happen as to why you don't have those prints.

37 1 it that was processed with powder as well.

2 Q. Okay. And did that yield anything that was  
3 usable?

4 A. No, it did not.

5 Q. Okay. You know, we live in a world of CSI and  
6 all of that. Tell us about that. I mean, you get the  
7 impression from TV that you can just walk in and find  
8 everybody's prints on every kind of surface. Tell us  
9 about that.

10 A. Yes, unfortunately, that's not exactly how it is  
11 in the crime scene world. In order to develop some of the  
12 things, you do have to have a general understanding of how  
13 a fingerprint is transferred to a surface. Basically,  
14 your fingerprints secrete inorganic and organic substances  
15 through your glands, including eccrine glands, sebaceous  
16 glands, and different glands that you have that secrete  
17 these substances. And also, in general, just when you  
18 wipe your face or your hands, you're transferring these  
19 oils to your fingers. And then when you touch a surface,  
20 it is transferring the substances to that surface.

21 So, generally speaking, you have to have some  
22 kind of substances or something has to be secreting from  
23 your fingertips or from your fingerprints in order to  
24 transfer a latent print or transfer that substance to that  
25 item. You have to handle it, you know, in certain ways to

1 Q. So was it surprising or not surprising to you  
2 that when you processed initially this wooden chest and  
3 items including the photo -- the smooth surface photo  
4 album, was it surprising or not surprising that you did  
5 not find any immediate latent prints?

6 A. Not surprising.

7 Q. Okay. Take us into the living room and tell us  
8 what you did as far as collection of evidence and  
9 processing in the living room area.

10 A. The living room, one of the focal points that I  
11 focused on here in the living room was the entertainment  
12 center. I had seen an open area for a TV; the TV was  
13 missing. I observed a hammer laying on top of the  
14 entertainment center, saw some markings on a wall mount  
15 that was actually fixed to the entertainment center. Also  
16 right below the entertainment center was another CD case  
17 or photo case, I forgot exactly what kind of case that it  
18 was, but another album case that was laying directly below  
19 the entertainment center. These items were processed for  
20 fingerprints as well. The hammer was collected as a  
21 actual piece of physical evidence and was processed with a  
22 different method at a later date.

23 Q. Okay. And what was the -- do you know what took  
24 place with the hammer, what method was used with that  
25 later?

1 A. The method that was used with the hammer is  
 2 called a cyanoacrylate method or also better known as  
 3 super glue. The active ingredients in super glue is  
 4 cyanoacrylate. What that does is it affix -- or it will  
 5 attach to your acids, your amino acids and proteins and  
 6 fatty acids that secrete from your -- from you fingertips,  
 7 and it will create this white kind of ash color look on  
 8 the fingerprint and it will show your actual ridges. It's  
 9 a fuming method is what it is.

10 Q. Was the hammer, did it have a wooden handle?

11 A. It did have a wooden handle, yes.

12 Q. What was the result of that super glue processing  
 13 of the hammer later; do you recall?

14 A. No -- no fingerprints were developed.

15 Q. Okay. Was that surprising to you?

16 A. No.

17 Q. Okay. Was there anything that came up from your  
 18 processing of the entertainment center or this CD case  
 19 that you refer to?

20 A. No.

21 Q. Okay. Did you find any identification, possible  
 22 identification of the homeowner there in the living room  
 23 area?

24 A. Yes.

25 Q. Okay. What did you find and what did you do with

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1 A. The brown folder did not have any latent prints  
 2 on it that were developed.

3 Q. Okay. Front door. Tell us what you saw, what  
 4 you did at the front door location.

5 A. On the inside of the front door, really what  
 6 brought my attention to the front door is that there were  
 7 some boxes that were scattered near the front door. They  
 8 would be on the -- that would be on the north side of the  
 9 front door. There were some boxes that were scattered  
 10 that appeared to me that they were once stacked. That's  
 11 really what brought my attention to the front door. I  
 12 processed the front door with black powder on the interior  
 13 and exterior side of the door.

14 Q. Did that result in any ridge detail that you  
 15 could develop?

16 A. No.

17 Q. Was there any indication of damage to either the  
 18 front door or the door from the back off the patio?

19 A. I did not find any signs of forced entry, no.

20 Q. The dining room area, the area around Nancy  
 21 Weatherly's body, tell us about that.

22 A. The dining room area, the table was -- was filled  
 23 with miscellaneous items such as papers and bags and  
 24 purses and tabletop crafts and arts. The chairs, as you  
 25 see here set up, was exactly where -- appears as --

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1 those items?

2 A. We found a work badge, an I.D. badge. I believe  
 3 it was to Lockheed Martin. I believe that's who it was.  
 4 Yes, Lockheed Martin is who she was employed with.

5 I processed them with fingerprint powder and  
 6 did develop, I believe, a latent print on them. I do not  
 7 know the extent or what happened with that print as far as  
 8 it being identified or not.

9 Q. So you did -- you were able to establish a latent  
 10 print from one of the identification cards?

11 A. Yes.

12 Q. Okay. Tell us what else you found in the living  
 13 room area, what you collected, what you did.

14 A. There were some miscellaneous pills, I think some  
 15 including some hydrocodone, some Tylenol ER that were  
 16 bagged, some pill bottles. There was also a coffee cup on  
 17 top of the coffee table. I recall there being some Justin  
 18 Roper boots in the living room. There was a black glove  
 19 that is -- was there, but I don't believe that it was  
 20 relevant to the case, where I found it, underneath a  
 21 cushion. See.

22 Q. Did you process a brown folder about -- that  
 23 containing a file on horses?

24 A. Yes.

25 Q. And what was the result of that?

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1 depicts the way that it was when I found it.

2 I found a checkbook, a pen, and a pair of  
 3 reading glasses or eyeglasses. Right on top of the table  
 4 as if the chair that is kicked out, if you put that chair,  
 5 slide it up to where it would normally go, I found a  
 6 checkbook, like I said, a pair of reading glasses and a  
 7 pen sitting right there at the table. There was pooling  
 8 of blood on top of the table right here as well. The  
 9 pooling of blood -- yes.

10 Q. Okay.

11 A. Yes. The pooling of blood goes off of the table  
 12 into this chair here that he is pointing at. And then  
 13 from into the chair, it pools off the blood and goes into  
 14 the floor.

15 Q. Okay.

16 A. I found a large amount of blood surrounding the  
 17 victim, and the pooling of the blood went underneath the  
 18 table and on underneath the -- the chest that's against  
 19 the wall.

20 Q. Was there any blood spatter in the area?

21 A. There was, there was some blood spatter, yes.

22 Q. And is this -- is there any indication that it  
 23 was from the bullet or other source, other origin?

24 A. I believe the blood spatter that we have, the  
 25 blood initially was pooling onto the table top. The blood

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1 then will flow. If you can follow me with this for just a  
 2 minute, the blood will flow down the side of the table and  
 3 it will go into the chair.

4 Once blood starts pooling into the chair, the  
 5 blood that continues to flow into the chair will cause  
 6 a -- it will splash into the blood and cause a  
 7 spattering. I found very little bit of spattered blood in  
 8 the chair, okay. That blood flows into the floor and  
 9 creates a pool of blood into the floor.

10 I believe that the victim at one time was  
 11 sitting in the chair while the blood, excuse me, while the  
 12 blood had been pooling into the table, pooling into the  
 13 chair, and then once the blood pooled into the floor, she  
 14 fell into the floor and splashed into the pool of blood  
 15 which caused a blood spatter pattern that went onto the  
 16 north wall.

17 Q. Okay. And that would be on this wall here; is  
 18 that correct?

19 A. Yes.

20 Q. All right. Was that -- was there a way to  
 21 determine if that was, in fact, blood?

22 A. Yes, a presumptive test --

23 Q. Okay.

24 A. -- to determine whether that is blood, yes.

25 Q. All right. Around the dining room table and

44

1 just tell us what some of the items that you collected  
 2 were.

3 A. In the dining room area, in each one of the pools  
 4 of blood, as I explained earlier, on the table, on the  
 5 chair, and in the floor, we collected a swab of the  
 6 blood. In addition to that, atop the table there were  
 7 miscellaneous pills. I did not know what these pills  
 8 included, but they were packaged together and they are  
 9 just miscellaneous pills that were collected atop the  
 10 table. While searching through this table, I came across  
 11 a bullet.

12 Q. Okay. Where was the bullet in relation --

13 A. What was the bullet or where? I'm sorry.

14 Q. -- in relation to the body of Nancy Weatherly?  
 15 Where was the bullet fragment?

16 A. The bullet was on top of the table, somewhat  
 17 underneath a green table mat. It had come out and gone  
 18 underneath a table mat.

19 Q. Okay. Did you find a cartridge casing?

20 A. Yes.

21 Q. And where was it found?

22 A. We found it on the -- it would be on the -- that  
 23 would be the east side of Ms. Weatherly in a -- just  
 24 between the table, and come out just a little bit. In  
 25 that general area there is where we found the cartridge

45

1 around the body of Nancy Weatherly, was there any  
 2 fragments that appeared to be fragments of the body of  
 3 Nancy Weatherly?

4 A. Atop the table, and then if you look over toward  
 5 the kitchen on that split wall right -- come down just a  
 6 little bit. Right there in that general area, we did find  
 7 several different little pieces of off-white material that  
 8 we believe were bone fragments.

9 Q. Okay. And was one of those fragments, the one on  
 10 top of the table, tested, a presumptive test done on that  
 11 fragment by you or Max Courtney?

12 A. The one on top of the table was a presumptive  
 13 test that was done by Max Courtney.

14 Q. And what was the result?

15 A. It tested positive.

16 Q. All right.

17 A. Tested positive for blood.

18 Q. For blood?

19 A. Yes.

20 Q. Okay. And so there was -- on this fragment that  
 21 was on top of the table, it tested positive for blood on  
 22 the -- what appeared to be a bone fragment; is that  
 23 correct?

24 A. Yes.

25 Q. Okay. Did you continue collecting items? And

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1 case.

2 Q. Did you do any processing in the hall bathroom?  
 3 A. The hall bathroom, yes. The hall bathroom was  
 4 processed with black powder. The toilet seats were  
 5 processed. The toilet flush handle was processed. The  
 6 countertops were processed.

7 Q. Did you obtain any latent prints from there?

8 A. We did obtain a latent print on the flush handle  
 9 of the toilet.

10 Q. In the master bedroom and bath, what did you do  
 11 in that area?

12 A. The master bedroom, processed all the handles and  
 13 all the drawers that had been pulled out of the  
 14 furnitures. Processed the blood stain that was found on  
 15 the mattress cover. It was the box springs cover is  
 16 what -- the sheet that lays over the box spring. There  
 17 was a really small blood stain there. We tested it as  
 18 well. In the bathroom, we processed the bathroom the same  
 19 as we did the other bathroom, with black powder.

20 Q. Okay. The northwest and west bedrooms, what did  
 21 you do in those rooms?

22 A. Can you slide that up for me, please?

23 Q. Yes.

24 A. The northwest bedroom, the one on top, again, we  
 25 processed them or the pieces of furniture that the drawers

1 had been pulled out, the bed, searched around the bed,  
 2 looked for anything irrelevant to the investigation  
 3 there. We spoke briefly about a small TV that I found in  
 4 the -- in the closet. I did look at that and processed  
 5 it, visually processed it by excluding it, that I don't  
 6 believe that it had been handled in quite some time,  
 7 simply because you could see that there was a palm  
 8 impression on top of the TV, but there was a layer of dust  
 9 that had settled on top of this palm impression.

10 Q. In the west bedroom, did you process anything  
 11 that was worth mentioning at this time?

12 A. In the west bedroom. Southwest bedroom right  
 13 here?

14 Q. There's a northwest, and then below that, the  
 15 west bedroom.

16 A. Yes. Yes, this bedroom was -- I collected the  
 17 cassette tape holder, processed it with black powder, the  
 18 latches, and was able to develop a latent print on one of  
 19 the latches.

20 Q. As a result of your work, did you and Max  
 21 Courtney collect, I believe, 24 items of evidence on that  
 22 date from the house?

23 A. Yes.

24 (Pause in proceeding.)

25 Q. Now, in the house, were these items that you

49 1 collected, is it your custom to give them a number or  
 2 designation, each of the items of evidence?

3 A. Yes, sir.

4 Q. Okay. And with respect to the house, were they  
 5 numbered by the initials "BRB slash 1", "BRB slash 2", and  
 6 so on?

7 A. Yes, sir.

8 Q. Okay. If you would, Officer Blansit, if you  
 9 would look at these. They're marked State's Exhibits 238  
 10 (sic) through 262, and ask you if you recognize each of  
 11 those.

12 A. (Witness complied.)

13 (Sotto voce discussion.)

14 Q. They're marked 230, I'm sorry, 230 through 262.

15 A. Yes, sir.

16 Q. And are these photographs of the evidence,  
 17 evidentiary items, potential evidentiary items that you  
 18 collected that day, June 30th, 2010, at Nancy Weatherly's  
 19 house in Godley, Texas?

20 A. Yes, sir.

21 Q. And do these -- and they show by placement and  
 22 exhibit number the items that you either processed or  
 23 collected?

24 A. They do.

25 Q. Okay. If you would look at these marked 263

1 through 270 as well.

2 A. (Witness complied.)

3 Q. Do you recognize these photographs?

4 A. I do.

5 Q. 263 through 270, what are they?

6 A. 263 through 270, these are photographs of  
 7 evidence that was collected at the scene, including the  
 8 bullet, the casing, the tape cassette. I may have to  
 9 refresh my memory on some of them, but yes.

10 Q. Do they fairly and accurately show the evidence  
 11 that you collected on that date, June 30th, 2010?

12 A. They do.

13 MR. CHAMBLESS: All right. Offer 238 through  
 14 270 -- 230, I'm sorry, 230 through 270.

15 (Pause in proceeding.)

16 THE COURT: The Court will take a 15-minute  
 17 recess at this time.

18 (Recess taken from 10:06 to 10:26 a.m.)

19 (Jury not present.)

20 THE COURT: Thank you. You may be seated.  
 21 MR. WESTFALL: I can state the objection I  
 22 have basically for the record onto the record, and then he  
 23 could offer these in front of the Jury.

24 THE COURT: All right. State is present and  
 25 ready?

51 1 MR. CHAMBLESS: My witness is making -- is in  
 2 the process of talking on the phone in the hallway. Other  
 3 than that, we're ready, but we can do this part.

4 THE COURT: All right. Defense is present  
 5 and Defendant is present.

6 Go ahead. Any objections to the 263 to 270?

7 MR. WESTFALL: Yes, Your Honor. For the  
 8 record -- no, I'm sorry, from 230 to --

9 MR. CHAMBLESS: 270.

10 THE COURT: 230 to 270. I'm sorry.

11 MR. WESTFALL: 235, Your Honor, we object  
 12 under 403, cumulative, substantially more prejudicial than  
 13 probative.

14 244, 245, 246, 247, we object, 403,  
 15 substantially more prejudicial than probative and  
 16 cumulative.

17 250 through 256, 403, substantially more  
 18 prejudicial than probative and cumulative.

19 And no objection to the other ones that I did  
 20 not specifically name.

21 THE COURT: May I see the pictures, please?

22 (Pause in proceeding.)

23 THE COURT: The objections are overruled.

24 230 through 270 are admitted.

25 (State's Exhibit Nos. 230 - 270 admitted.)

1 MR. CHAMBLESS: Thank you.  
 2 THE COURT: You may bring in the Jury.  
 3 (Jury present.)  
 4 THE COURT: You may be seated. Yes, sir.  
 5 Q. (BY MR. CHAMBLESS) Officer Blansit, I want to  
 6 show you two items that have already been admitted; first,  
 7 224 in the plastic baggy, and 224-A, the packaging. Do  
 8 you recognize that?  
 9 A. Yes, I do.  
 10 Q. What is that?  
 11 A. That is the 9 millimeter cartridge case that was  
 12 found in the house.  
 13 Q. Okay. And did you collect that?  
 14 A. I did.  
 15 Q. And that being on June 30th, 2010; is that  
 16 correct?  
 17 A. Yes, sir.  
 18 Q. Now I show you what's marked State's Exhibit  
 19 twenty -- 225 in the plastic, and then the packaging  
 20 marked 225-A. Do you recognize that?  
 21 A. Yes, I do.  
 22 Q. And what is that?  
 23 A. It's the fired bullet that was located atop a  
 24 table, dining room table inside the house.  
 25 Q. All right. If you would, step down for just a

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1 A. Yes, same item, close-up photograph.  
 2 Q. What is it that -- what information do you gather  
 3 from the end of the cartridge casing like this? Is there  
 4 anything significant? Does it tell you what caliber or  
 5 type of --  
 6 A. Couple different things. Number one, it is a  
 7 fired cartridge case. Well, indicating it's fired because  
 8 of the primer cap has the -- where the hammer would hit  
 9 the primer cap. It is a 9 millimeter Luger FC, Federal  
 10 Cartridge. It has its brand, its caliber, and the type of  
 11 cartridge that it is.  
 12 THE COURT: Can you -- can you switch  
 13 positions so the Court Reporter can at least see the  
 14 witness. If you'll stand on the other side of  
 15 Mr. Chambliss.  
 16 THE WITNESS: Oh, I'm sorry. Okay.  
 17 THE COURT: And look at the Court Reporter  
 18 and the Jury when you're talking. That will help a lot.  
 19 A. Again, the -- the primer cap here in the center  
 20 has an indication that it had been fired from the hammer  
 21 striking the primer cap. On the outside, the lettering  
 22 indicates the caliber of the bullet or the cartridge. The  
 23 Luger is the type of cartridge that it is, and the FC  
 24 indicates the make, Federal Cartridge.  
 25 Q. Show you a couple of other photographs here.

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1 minute. These photographs here, first this one has a  
 2 number by it, and what's the reason for the yellow number?  
 3 A. It indicates the item number. As I briefly  
 4 explained earlier, each piece of property or evidence has  
 5 a item that is -- or a number that is relevant to that  
 6 piece of property, and that was -- indicate No. 1, that  
 7 would be the first piece of evidence that was marked  
 8 inside the house.  
 9 MR. HEISKELL: Your Honor, could he explain  
 10 what exhibit, explain to the Jury at this point what  
 11 exhibit number.  
 12 Q. (BY MR. CHAMBLESS) Would this be -- it's BRB-01  
 13 marked as State's Exhibit 224. And what is the location  
 14 of this item here?  
 15 A. That's in the dining room area just beside the  
 16 dining room table on the floor mat or the rug that is  
 17 there.  
 18 Q. Okay.  
 19 A. That -- if you want me to further explain, I  
 20 will, where it is.  
 21 Q. Yes.  
 22 A. You see the mark here on the leg, that would be  
 23 your -- that would be your southeast leg to the table.  
 24 Q. Okay. And then this closer-up is same item; is  
 25 that correct?

54

1 These, I believe, are marked 16, and they refer to State's  
 2 Exhibit 225. All right. What are we looking at here?  
 3 A. This is the fired bullet that was found on top of  
 4 the table.  
 5 Q. All right. Where was it found on the table?  
 6 A. It was found underneath a tabletop mat. You can  
 7 see this green mat here, there's -- kind of folded back.  
 8 It was found underneath.  
 9 Q. Do you have -- do you have an explanation? Was  
 10 the -- was the bullet under the mat when it was fired and  
 11 ricocheted, or was it, the mat, placed over it by things  
 12 being moved around? Do you have any -- any thoughts about  
 13 that?  
 14 A. Um.  
 15 Q. Any idea why it was found where it was?  
 16 A. There could be one reason is the table could have  
 17 been ransacked or tossed. Like I said, there were  
 18 miscellaneous papers and stuff atop the table. The purse  
 19 had been dug through. It's very possible that the -- that  
 20 the mat was folded over the bullet after it had been  
 21 fired.  
 22 Q. Okay. And is this a closer-up view? And why is  
 23 the ruler used in these photographs?  
 24 A. Well, we put scales in the photograph to show  
 25 relevant size, to depict the exact size of what this

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1 bullet is.

2 Q. And --

3 A. Yes.

4 Q. And then, finally, the -- I guess the most near

5 dimension of this bullet here?

6 A. Yes, close-up photograph indicating an

7 approximate size. With the scale, as a close-up, you can

8 actually see your numbers.

9 Q. Now, you indicated you found a cartridge -- I

10 mean, a cassette case in the west bedroom; is that

11 correct?

12 A. Yes.

13 Q. This is marked 266. What is -- what is this?

14 A. It's a case, cassette tape case that was found in

15 the back northwest bedroom, just more or less right after

16 the entry of the room. It was laying there outside of the

17 closet. As I said earlier, the latches were open on it.

18 Q. Is this the position it was in before it was

19 processed by you?

20 A. Yes, sir.

21 Q. And the two latches appear to be up and open; is

22 that correct?

23 A. Yes.

24 Q. What's different about these, this photograph

25 here?

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1 Q. And I believe it's marked BRB-23; is that

2 correct?

3 A. That is correct.

4 Q. Now, on the backside here, is that the actual

5 latent print?

6 A. Yes, that's the actual latent print with the tape

7 lift on it, yes.

8 Q. All right. So this is the latent print developed

9 from the latch of the cassette case from the photographs,

10 and the latent print is BRB-23; is that correct?

11 A. That is correct.

12 Q. And did you actually develop that latent print

13 that day, June 30th, 2010, yourself?

14 A. I did.

15 Q. All of the items of evidence we're talking about

16 from the house, from Nancy Weatherly's house, did you take

17 possession of all of those items that day?

18 A. Yes.

19 Q. And did you secure those items in the Mansfield

20 Police Department safely?

21 A. Yes.

22 Q. And how do you do that? What's y'all's procedure

23 in doing that?

24 A. In this case, numerous pieces of evidence, they

25 were taken to our Crime Scene office, it's a secured

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1 A. The photograph, what makes this different is I

2 had brought the case into the kitchen and set it up on top

3 of the dining room table to where I could better process

4 it. The latches were closed down to where I could process

5 them. It has a scale in the photograph showing where the

6 fingerprint was developed.

7 Q. Okay. And then finally, this one marked State's

8 268.

9 A. Again, what's been implemented into this picture

10 is the Tent No. 23 indicating the item number, showing a

11 little bit more of a close-up without a scale of the

12 fingerprint that was developed.

13 Q. Okay. Thank you. Go ahead and have a seat.

14 Did you collect the cassette case itself?

15 A. No.

16 Q. Show you one of the latent fingerprints within

17 State's Exhibit 215, within an envelope. Would you take

18 the item out and see if you recognize it, please, sir?

19 A. Yes.

20 Q. Do you recognize that item?

21 A. I do.

22 Q. What is this item that's part of the collection

23 of latent prints within State's 215?

24 A. That is the lifted fingerprint that was on the

25 cassette tape holder.

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1 office, and put into the secure office where, if some of

2 the property had to be processed later, it would be

3 readily available to us.

4 Q. Okay. Now we've got some photographs here that

5 show each of the items, I think that are marked BRB-1

6 through 24, that were collected within the house; is that

7 correct?

8 A. I'm sorry. Repeat that.

9 Q. BRB-1 through 24, are those the numbered items

10 that were collected within Nancy Weatherly's house?

11 A. Yes.

12 Q. All right. All right. This one here, and what

13 are we looking at here?

14 A. The cartridge case.

15 Q. Okay. And this would be Item No. 1; is that

16 correct?

17 A. Yes.

18 Q. That shows its position in relationship to the --

19 at the top the -- is that the dining room table?

20 A. Yes, it is.

21 Q. Leg of the dining room table. All right.

22 Now you've got BRB-2 marked down here at the

23 bottom. What is -- what are we seeing? What's the

24 purpose of this item?

25 A. These are hair fibers that were found on the

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1 floor in close proximity to the victim.  
 2 Q. Okay. And were these collected as well?  
 3 A. They were.  
 4 Q. The next item, BRB-3, where was this within the  
 5 house and what are we looking at?  
 6 A. If you -- if you're looking at -- this is a  
 7 newspaper article. And if you look to the left of this  
 8 newspaper looking at this paper, you will see the dining  
 9 room table. That's where this paper is in -- relevant to  
 10 the dining room table. And your kitchen is over to  
 11 your -- to your right.  
 12 Q. Okay.  
 13 A. Yeah, here you go.  
 14 Q. And back here, it would be, is it to the north  
 15 side of the dining room table?  
 16 A. Yes.  
 17 Q. Okay. All right. So between the dining room  
 18 table and the wall; is that the approximate area we're  
 19 looking at?  
 20 A. Yes.  
 21 Q. A piece of newspaper?  
 22 A. Yes.  
 23 Q. Why was it collected?  
 24 A. It had a shoe impression, a shoe impression on  
 25 it --

60  
 1 apparently, as you look at it?  
 2 A. To hold a TV.  
 3 Q. And there was no TV there?  
 4 A. No, there was not.  
 5 Q. The hammer was collected; is that correct?  
 6 A. Yes, it was.  
 7 Q. Item No. 6, where was this found?  
 8 A. In the floor on the couch -- near the couch in  
 9 the living room.  
 10 Q. It appears to be a number of pills in a plastic  
 11 bag?  
 12 A. Yes.  
 13 Q. Okay. Item No. 7, where was this found?  
 14 A. It's a prescription bottle that was found on  
 15 the -- on the couch.  
 16 Q. All of these items, we say 1 through 7, they  
 17 would -- they're referred to as BRB-1, 2, 3, 4, 5, 6, 7?  
 18 A. That is correct, yes.  
 19 Q. This was collected as well; is that true?  
 20 A. Yes.  
 21 Q. Now, 8, what is 8 here?  
 22 A. 8, that's at the base of the entertainment  
 23 center. It's another CD album, photo album that was  
 24 collect -- or it was not collected; it was processed.  
 25 Q. All right. Why was it not collected?

61  
 1 Q. Okay.  
 2 A. -- that was developed.  
 3 Q. All right. Item No. 4, what are we looking at  
 4 here?  
 5 A. You're looking at a Band-Aid. I don't know if  
 6 the Jury is able to actually see the hair fibers that are  
 7 around the Band-Aid, but this is -- this is hair fibers on  
 8 top of the table.  
 9 Q. All right. Additional hair fibers --  
 10 A. Okay.  
 11 Q. -- that were collected; is that --  
 12 A. Yes.  
 13 Q. -- the purpose of this? Okay.  
 14 A. Yes.  
 15 Q. This might be a better view of that.  
 16 A. Yes.  
 17 Q. Your No. 5, what -- where -- what is the location  
 18 of this within the house?  
 19 A. That's on the entertainment center in the living  
 20 room. It's the hammer.  
 21 Q. Okay. Would this be on the, I guess, the  
 22 southern end of the house next to the garage?  
 23 A. Yes.  
 24 Q. All right. And this is the entertainment  
 25 center. It appeared to be -- what was it being used for

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 1 A. Did not develop any fingerprints or evidential  
 2 value on it.  
 3 Q. So it was processed but not collected, but given  
 4 a number, No. 8?  
 5 A. Yes.  
 6 Q. No. 9?  
 7 A. Pill capsules. These were found on top of the  
 8 coffee -- coffee table in the living room as well.  
 9 Q. All right. Those were collected?  
 10 A. Yes.  
 11 Q. Okay. Now, what's marked as your exhibit BRB-10,  
 12 where was this found and what was done?  
 13 A. That was also found on top of the coffee table in  
 14 the living room. It's a coffee cup that had a liquid  
 15 sample in it.  
 16 Q. And the result of the processing was what?  
 17 A. No -- no fingerprints developed.  
 18 Q. All right. So this was processed, but, also like  
 19 No. 8, not collected?  
 20 A. Not collected, right. Photograph only.  
 21 Q. BRB-11, what are we seeing here? Where was this  
 22 found?  
 23 A. The Lockheed Martin name badge, it was found in  
 24 the chair in the living room. This photograph was where I  
 25 had developed or processed the name badge, and then I

1 photographed it on top of the countertop or the -- I'm  
 2 sorry -- coffee table where the photograph was taken at.  
 3 Q. All right. Was this a -- was a latent print  
 4 developed from this item?  
 5 A. There was.  
 6 Q. And did you develop that latent print and collect  
 7 the latent print yourself?  
 8 A. Yes, sir.  
 9 Q. Okay. I believe I'll just represent to you it's  
 10 already been admitted into evidence as BRB-11.  
 11 A. Okay.  
 12 Q. But that is a latent print you, yourself,  
 13 developed from the -- appears to be an I.D. card, Lockheed  
 14 Martin, says N.A. Weatherly or Nancy; is that correct?  
 15 A. Yes, sir, that is correct.  
 16 Q. The card itself was not collected once you  
 17 obtained the latent print?  
 18 A. No, sir.  
 19 Q. BRB-12, where is the position of this?  
 20 A. It's in the dining room on the dining room table,  
 21 atop the table where the blood pool is.  
 22 Q. All right.  
 23 A. It's going to be on the -- that would be on the  
 24 west wall.  
 25 Q. So it would be at the west side of the table,

1 west wall on the edge of the dining room table?  
 2 A. Correct.  
 3 Q. And what did you do with this?  
 4 A. Photographed it, and then we swabbed it to  
 5 collect a sample.  
 6 Q. Okay. BRB-13, what are we looking at?  
 7 A. This is the pooling of the blood in the chair on  
 8 the west side of the table.  
 9 Q. What is the relationship of this to the blood we  
 10 saw in the previous photograph?  
 11 A. The blood on the previous photograph was atop the  
 12 table where the blood was pooling or flowing off of the  
 13 table into the chair.  
 14 Q. Okay. Did you also collect a sample of this?  
 15 A. Yes.  
 16 Q. By a swab?  
 17 A. Yes.  
 18 Q. Finally, State's -- I mean, BRB-14, what is the  
 19 location of this?  
 20 A. This is right below the table on the west side  
 21 near the west wall of the table. This is where  
 22 Ms. Weatherly had been located at, where her face was  
 23 that's on the floor.  
 24 Q. Her head was in this area; is that correct?  
 25 A. That is correct.

1 Q. Did you take a sample of this as well?  
 2 A. Yes, sir.  
 3 Q. State's -- BRB-15, what are we looking at?  
 4 A. A blood spatter pattern on the west wall.  
 5 Q. Okay. 16 is -- what are we looking at here?  
 6 A. That's the fired bullet.  
 7 Q. Okay.  
 8 A. It was found on top of the table in the dining  
 9 room.  
 10 Q. 17, what is -- what is 17?  
 11 A. It's the off-white material that was -- a  
 12 presumptive test was done on that and concluded that it  
 13 was positive for blood. That's what we believe to be bone  
 14 fragments.  
 15 Q. This was on top of the dining room table; is that  
 16 correct?  
 17 A. Yes, on top of the dining room table as well.  
 18 Q. Was it collected?  
 19 A. It was collected, yes.  
 20 Q. Another photograph of the same exhibit; is that  
 21 correct?  
 22 A. Yes.  
 23 Q. BRB-18, where was this? What was the location of  
 24 18?  
 25 A. These are in the -- between the dining room and

1 the kitchen, on the floor, just near the refrigerator is  
 2 where these were found at. It's the same material as to  
 3 what was found on top of the table.  
 4 Q. Also apparently appear to be bone in nature?  
 5 A. Yes, it does.  
 6 Q. Okay. Were these collected?  
 7 A. Yes, they were.  
 8 Q. BRB-19, what is the location of this and what is  
 9 the exhibit BRB-19?  
 10 A. It's, again, near the dining room, kitchen area.  
 11 That's on the rug that is in the dining room area. 19 is  
 12 also representing another white fragment believed to be  
 13 bone fragments.  
 14 Q. All right. Now, 20 and 21, where is the location  
 15 of 21?  
 16 A. This would be in the guest bathroom in the main  
 17 hallway as you're going toward the north side of the  
 18 house.  
 19 Q. Okay.  
 20 A. And that's obviously on the toilet in the guest  
 21 bathroom.  
 22 Q. Did you obtain and collect a latent print from  
 23 this toilet lid?  
 24 A. From the toilet lid? I would have to refer to my  
 25 notes. I do not recall.

1 Q. All right. 22, BRB-22?  
 2 A. This is -- I'm sorry. Go ahead.  
 3 Q. Go ahead. Is this also in the guest bathroom?  
 4 A. It is, yes.  
 5 Q. What has -- what has happened here? What are we  
 6 looking at?  
 7 A. That is the flush handle of the same toilet in  
 8 the guest bathroom, and a latent print was developed on  
 9 the flush toilet -- on the flush handle.  
 10 Q. And I'll represent to you it's been admitted as  
 11 BRB-22. And did you, yourself, collect that latent print  
 12 that day?  
 13 A. Yes.  
 14 THE COURT: It was exhibit -- it was admitted  
 15 as State's Exhibit something else. The Medical Examiner  
 16 No. is 22. You said -- 258 is the State's Exhibit,  
 17 correct?  
 18 MR. CHAMBLESS: Yes, sir.  
 19 Q. (BY MR. CHAMBLESS) State's Exhibit 258 is BRB-22  
 20 and so the -- would the latent print be BRB-22?  
 21 A. Yes.  
 22 Q. Okay. Thank you. 23, we've looked at already.  
 23 This would be the print developed from the latch of the  
 24 cassette case; is that correct?  
 25 A. Yes, sir.

69  
 1 Q. Go back just briefly to our diagram. It was  
 2 found in the west bedroom, which is just past the dining  
 3 room on the left; is that correct?  
 4 A. That is correct.  
 5 Q. This photograph, 260, what are we looking at  
 6 here?  
 7 A. It's in the master bedroom.  
 8 Q. Okay. And there appears to be a focus here.  
 9 You've used a ruler. And what is the purpose of this  
 10 photograph?  
 11 A. The -- an apparent blood stain that was located  
 12 on, like I said, the -- the box spring cover.  
 13 Q. Okay. And is this a closer picture of that  
 14 apparent blood stain?  
 15 A. Yes, sir.  
 16 Q. And was that -- was a cutting of that stain  
 17 obtained and recovered by you and Max Courtney that day?  
 18 A. Yes, sir.  
 19 Q. If you would -- you've already identified  
 20 BRB-23. Would you take the latent prints out of this  
 21 package, and let's talk about these for just a minute.  
 22 A. Oh, I see, it's stapled to it. Just go through  
 23 these?  
 24 Q. Yes, let's just go through these.  
 25 A. This is going to be a print that was lifted off a

1 CD, an audio CD that I believe was found in a pickup.  
 2 Q. In a Tundra pickup?  
 3 A. In a Tundra pickup, yes.  
 4 Q. Okay. We're going to talk about that in just a  
 5 minute.  
 6 A. Okay. These, again, are latent prints that have  
 7 been developed off of a Tundra pickup. They were  
 8 processed.  
 9 THE COURT: What was the State's Exhibit  
 10 number on those packets?  
 11 MR. CHAMBLESS: It's 215, 1 through 10,  
 12 Judge.  
 13 THE COURT: Thank you.  
 14 Q. (BY MR. CHAMBLESS) Now let's focus just for the  
 15 moment on these three. I believe they were taken from the  
 16 house; is that correct?  
 17 A. Okay. Yes.  
 18 Q. Okay. What numbers are they? What are your  
 19 exhibit numbers?  
 20 A. My exhibit numbers will be BRB-22, BRB-21, and  
 21 BRB-11.  
 22 Q. Okay.  
 23 A. Do you want me to --  
 24 Q. Yes. Tell us where they came from.  
 25 A. Okay. BRB-11 is from the I.D. card, the Lockheed

71  
 1 Martin badge, I.D. badge. BRB-21 is on the lid to the  
 2 toilet. And BRB-22 is on the flush handle of the toilet.  
 3 Q. Okay. And then you've previously spoken that  
 4 BRB-23 was the latent print developed by you from the  
 5 handle of the cassette case; is that correct?  
 6 A. That is correct.  
 7 Q. All right. Those are the four latent prints  
 8 recovered by you from the house of Nancy Weatherly; is  
 9 that true?  
 10 A. I do recall that, yes.  
 11 Q. Okay. All right. If you would be kind enough to  
 12 open this too.  
 13 A. What's in it?  
 14 Q. These are the hairs. First, it's marked BRB-02.  
 15 Do you see the -- what is contained within BRB-02?  
 16 A. Loose hair fibers.  
 17 Q. Okay.  
 18 A. Do you want them open?  
 19 Q. Would you open it and see if that's what it  
 20 contains within that, please.  
 21 A. (Witness complied.)  
 22 Q. Okay.  
 23 A. Yes, you can see the hairs.  
 24 Q. Okay. Contained within BRB-02, we've seen a  
 25 picture of it, but these are loose hairs collected by you

1 and Max Courtney that day; is that correct?

2 A. Correct.

3 Q. Okay. If you would be kind enough to open this  
4 also, I believe also contains hairs, marked BRB-04.

5 A. (Witness complied.)

6 MR. CHAMBLESS: Offer State's Exhibits 271  
7 and 272, which are hairs marked BRB-02 and -04, the  
8 packaging, 271-A and 272-A.9 MR. WESTFALL: No objection as offered, Your  
10 Honor.

11 THE COURT: Admitted.

12 (State's Exhibit Nos. 271 - 272 admitted.)

13 (State's Exhibit Nos. 271-A, 272-A  
14 admitted for record purposes only.)15 Q. (BY MR. CHAMBLESS) I've shown you what's marked  
16 BRB-03. Would you be kind enough to open that, please,  
17 sir.

18 A. (Witness complied.)

19 (Sotto voce discussion.)

20 Q. We've seen a picture of it, I believe, on  
21 photographs. This is the newspaper that was collected by  
22 you and Max Courtney; is that correct?

23 A. Yes.

24 Q. And you've told us the location of that, which  
25 was where?

72

1 testified this is some Tylenol capsules; is that correct?

2 A. Yes.

3 Q. Would you be kind enough to open that, please.  
4 A. (Witness complied.)5 Q. These were collected as well by you and Max  
6 Courtney on that date; is that correct?

7 A. Correct.

8 MR. CHAMBLESS: Offer the exhibit, BRB-06,  
9 the capsules as State's Exhibit No. 275, the packaging as  
10 275-A.11 MR. WESTFALL: No objection as offered, Your  
12 Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 275 admitted.)

15 (State's Exhibit No. 275-A admitted for  
16 record purposes only.)17 Q. (BY MR. CHAMBLESS) BRB-07, I believe you  
18 testified, is a pill bottle that was found in or on the  
19 couch area. Will you be kind enough to open that and see  
20 what's contained therein.

21 A. Can I cut through that?

22 Q. Yeah.

23 A. (Witness complied.)

24 Q. And this was collected by you and Max Courtney on  
25 that date, June 30th; is that correct?

73

1 A. In the dining room area beside the dining room

2 table.

3 MR. CHAMBLESS: Okay. I offer the BRB-03,  
4 which is the newspaper, as 273, and the packaging as  
5 273-A.6 MR. WESTFALL: No objection as offered, Your  
7 Honor.

8 THE COURT: Admitted.

9 (State's Exhibit No. 273 admitted.)

10 (State's Exhibit No. 273-A admitted for  
11 record purposes only.)12 Q. (BY MR. CHAMBLESS) BRB-05, I believe you  
13 testified, is a hammer. Would you be kind enough to open  
14 that package and see if that's the hammer that was  
15 collected by you that day.

16 A. Yes.

17 MR. CHAMBLESS: Okay. We offer the hammer  
18 as 274, packaging as 274-A, his marking BRB-05.19 MR. WESTFALL: No objection as offered, Your  
20 Honor.

21 THE COURT: Admitted.

22 (State's Exhibit No. 274 admitted.)

23 (State's Exhibit No. 274-A admitted for  
24 record purposes only.)

25 Q. (BY MR. CHAMBLESS) BRB-06, I believe you

1 A. Yes.

2 MR. CHAMBLESS: Offer BRB-07 as State's  
3 Exhibit 276, the packaging as 276-A.

4 MR. WESTFALL: For the record only?

5 MR. CHAMBLESS: For the record only.

6 MR. WESTFALL: No objection as offered, Your  
7 Honor.

8 THE COURT: Admitted.

9 (State's Exhibit No. 276 admitted.)

10 (State's Exhibit No. 276-A admitted for  
11 record purposes only.)12 Q. (BY MR. CHAMBLESS) BRB-09, you've testified, is  
13 some Tylenol capsules. Would you be kind enough to open  
14 that, please, sir.

15 A. (Witness complied.)

16 MR. CHAMBLESS: Offer BRB-09, Tylenol  
17 capsules, as State's Exhibit 277, packaging as 277-A for  
18 the record.19 MR. WESTFALL: No objection as offered, Your  
20 Honor.

21 THE COURT: Admitted.

22 (State's Exhibit No. 277 admitted.)

23 (State's Exhibit No. 277-A admitted for  
24 record purposes only.)

25 Q. (BY MR. CHAMBLESS) Okay. BRB-12, 13, 14, and

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1 15, I'll show these to you. And could you tell us what  
2 these are, these four exhibits?

3 A. This one here, BRB-13, is the top one. It's the  
4 blood swab that was collected off of the chair in the  
5 dining room table.

6 About to sneeze.

7 The next one, BRB-14, is a blood swab  
8 collected off of the floor next to the table. And the  
9 next one is BRB-15, and it is collected off of the wall.

10 Q. Okay. Now I'll show you what's marked as 12.  
11 Would you tell us what that is, please, sir.

12 A. This is the blood stain swab that is collected  
13 off -- off the table, the top of the table.

14 Q. All right. Does it indicate it's packaging only  
15 at this time?

16 A. I'm sorry?

17 Q. Does it indicate that what it contains here is  
18 packaging only at this time?

19 A. Okay, packaging only, yes.

20 Q. But BRB-12 was a swab from the blood as you  
21 described; is that correct?

22 A. Yes, that is correct.

23 MR. CHAMBLESS: Okay. Offer these, these  
24 being the --

25 (Sotto voce discussion.)

1 would open that and tell us if that contains that  
2 particular item.

3 A. Yes, it does.

4 Q. This would be BRB-18; is that correct?

5 A. That is correct.

6 Q. Can you place those in there.

7 A. (Witness complied.)

8 Q. Finally, BRB-19, if you would be kind enough to  
9 open that and see if it contains the items that were  
10 collected by you on that date.

11 A. Going to put this one in there first. I can't  
12 get the other one out. There's more. Yes.

13 Q. Does it contain the item that was collected by  
14 you on that date?

15 A. Yes, it does.

16 MR. CHAMBLESS: At this time we offer BRB-17,  
17 the packaging as 279-A for record purposes, the bone  
18 fragment as 279.

19 Offer BRB-18, the packaging as 280-A for  
20 record purposes, the bone fragments as 280 within a clear  
21 plastic bag.

22 BRB-19 as State's Exhibit 281, packaging as  
23 281-A for record purposes.

24 MR. WESTFALL: To each, Your Honor, object  
25 under 403; substantially more prejudicial than probative,

1 MR. CHAMBLESS: Offer 278, State's Exhibit  
2 278, which I represent to be the four swabs taken by  
3 Officer Blansit from the Nancy Weatherly house on June  
4 30th, 2010. They're marked as BRB-12, 13, 14, and 15  
5 within State's Exhibit 278. The packaging we're offering  
6 for the record only; the swabs themselves were offered for  
7 all purposes.

8 MR. WESTFALL: Your Honor, we have -- we have  
9 no objection as offered, with the -- I mean with the  
10 understanding that if it ever comes to pass that it's  
11 necessary, they'll be separated.

12 THE COURT: Admitted.

13 (State's Exhibit No. 278 admitted.)

14 Q. (BY MR. CHAMBLESS) All right. Show you what's  
15 marked as State's -- BRB exhibits 17, 18, and 19, which  
16 you've testified these are fragments of material that were  
17 found in the house at different locations.

18 First, BRB-17, if you would open that,  
19 please.

20 A. (Witness complied.)

21 Q. You're holding in your hand the contents of  
22 BRB-17; is that correct?

23 A. Correct, yes.

24 (Pause in proceeding.)

25 Q. Show you what's marked as State's BRB-18, if you

1 and cumulative.

2 THE COURT: Objection is overruled. The  
3 exhibits are admitted.

4 (State's Exhibit Nos. 279 - 281 admitted.)

5 (State's Exhibit Nos. 279-A, 280-A, 281-A  
6 admitted for record purposes only.)

7 Q. (BY MR. CHAMBLESS) If you would, take a look  
8 at BRB-20. And you've testified these were collected  
9 by you on that date.

10 If you would, open that and see if it  
11 contains the item that was collected.

12 A. These were collected by both of us. These are  
13 the pills that were on top of the -- these are the pills  
14 that were on top of the dining room table that were  
15 miscellaneous pills that were collected together. One  
16 pill was in this one.

17 Q. Show you what's marked State's Exhibit No.  
18 BRB-24, if you would open that and see if it contains the  
19 item you spoke about.

20 (Sotto voce discussion.)

21 MR. CHAMBLESS: At this time we offer BRB-20  
22 as State's Exhibit 282, packaging as 282-A for record  
23 purposes.

24 MR. WESTFALL: No objection as offered, Your  
25 Honor.

1 THE COURT: Admitted.  
 2 (State's Exhibit No. 282 admitted.)  
 3 (State's Exhibit No. 282-A admitted for  
 4 record purposes only.)  
 5 MR. CHAMBLESS: We also offer BRB-24 as  
 6 State's Exhibit 283, and the packaging as 283-A for  
 7 record.  
 8 MR. WESTFALL: No objection as offered, Your  
 9 Honor.  
 10 THE COURT: Admitted.  
 11 (State's Exhibit No. 283 admitted.)  
 12 (State's Exhibit No. 283-A admitted for  
 13 record purposes only.)  
 14 Q. (BY MR. CHAMBLESS) And just, again, we -- I think  
 15 they were already admitted, but the latent prints that you  
 16 recovered from the house, I believe they're marked BRB-11,  
 17 21, 22 and 23; is that correct?  
 18 A. That sounds right, yes.  
 19 MR. CHAMBLESS: And we offer those as well.  
 20 I think they've already been offered and admitted as part  
 21 of State's Exhibit 215, but I make those specific requests  
 22 at this time.  
 23 MR. WESTFALL: May I have just a moment?  
 24 THE COURT: Yes, sir.  
 25 (Sotto voce discussion.)

1 MR. CHAMBLESS: I offer all of the prints,  
 2 those are BRB-11, 21, 22, 23, as well as BMC-01, 02, 11,  
 3 36, and 37 which contains two latent prints, a total of  
 4 ten latent prints. I think they've already been admitted.  
 5 THE COURT: Okay.  
 6 MR. HEISKELL: I have them as admitted,  
 7 Judge, under 215.  
 8 Q. (BY MR. CHAMBLESS) Following the evaluation of  
 9 the house of Nancy Weatherly, did you go, you and Max  
 10 Courtney go to a location and look at her vehicle, a  
 11 truck?  
 12 A. Yes, we did.  
 13 Q. How long were you at the house roughly; do you  
 14 recall?  
 15 A. 10 hours, I believe. I can find out for you if  
 16 you need me to.  
 17 Q. Roughly. I'm not asking exactly, but just  
 18 roughly it was about 10 hours?  
 19 A. About 10 hours, yes.  
 20 Q. Okay. What kind of vehicle was it?  
 21 A. It was a Toyota Tundra, green, forest green  
 22 pickup.  
 23 Q. And did you process the Toyota Tundra for  
 24 evidence as well?  
 25 A. Yes.

80 1 Q. Tell the Jury something of what you did, what you  
 2 did as far as processing for evidence.  
 3 A. Um, in relation to fingerprints, I processed the  
 4 outside vehicle, including door handles, door frames,  
 5 windows, gas caps, with black powder; then tried to  
 6 attempt latent fingerprints.  
 7 Q. Okay. Show you some photographs marked 271  
 8 through 290 -- I'm going to have to change that now. Have  
 9 you seen these photographs before this moment in time?  
 10 A. Yes.  
 11 Q. And do these photographs fairly and accurately  
 12 show the Toyota Tundra and parts of the Tundra that you  
 13 processed for evidence on that day?  
 14 A. Yes.  
 15 (Sotto voce discussion.)  
 16 (Pause in proceeding.)  
 17 MR. CHAMBLESS: Offer 284 through 314 at this  
 18 time.  
 19 MR. WESTFALL: Your Honor, I looked at these  
 20 pictures over the break, and I have no objection to them.  
 21 THE COURT: Thank you. Admitted.  
 22 (State's Exhibit Nos. 284 - 314 admitted.)  
 23 Q. (BY MR. CHAMBLESS) All right. Now, the items  
 24 that were collected from Nancy Weatherly's vehicle,  
 25 instead of being designated BRB, were they used -- did

81 1 they use the initials "BMC"?  
 2 A. Yes, we did "BMC".  
 3 Q. And then 1 through, and I believe there's 27 of  
 4 these exhibits; is that correct?  
 5 A. Correct.  
 6 Q. Starting with No. 1, what is shown here on  
 7 State's Exhibit 284?  
 8 A. It's a photograph of a latent print, latent print  
 9 from the front door, the exterior door of the driver side.  
 10 Q. Were you able to --  
 11 A. I'm sorry. Passenger side.  
 12 Q. Were you able to obtain a latent print from this  
 13 area?  
 14 A. I do believe so, yes. Yes.  
 15 Q. And so it would be marked "BMC dash 01"; is that  
 16 correct?  
 17 A. That is correct.  
 18 Q. What is shown on this photograph?  
 19 A. It's gonna be also on the passenger front door  
 20 handle. It's a latent -- latent print development.  
 21 Q. All right. And did you personally collect the  
 22 latent print on that day?  
 23 A. Yes.  
 24 Q. It would be marked BMC-02; is that correct?  
 25 A. 02, correct.

1 Q. BMC-03 would have been a swab; is that true?  
 2 A. Yes, a swab of the exterior door handle.  
 3 Q. BMC-04, what are we looking at?  
 4 A. Looking at some CDs that were found in the visor,  
 5 interior, the interior of the vehicle.  
 6 Q. All right. Is this a, I guess, a better picture  
 7 of that?  
 8 A. Yes.  
 9 Q. There are actually, I believe, one, two, three,  
 10 four DVDs, correct?  
 11 A. Yes.  
 12 Q. And they're marked BMC-04; is that true?  
 13 A. Correct.  
 14 Q. BMC-05, what was BMC-05?  
 15 A. It's a swab of the exterior door handle on the  
 16 driver side.  
 17 Q. Okay. BMC-06, what is this and where was it  
 18 located?  
 19 A. It's the front console of the -- center console  
 20 of the vehicle. BM-6 (sic) is showing the cigarette  
 21 lighter.  
 22 Q. Okay.  
 23 A. And the -- well, the cigarette box, and the  
 24 cigarette lighter is what it's representing.  
 25 Q. There is a Marlboro Light cigarette package just

84  
 1 Q. Okay. 293, BMC-11, what is that, please, sir?  
 2 A. It's the -- indicating the liquid sample from a  
 3 Dairy Queen cup that was found in the car.  
 4 Q. Now, how many Dairy Queen cups were found in the  
 5 truck?  
 6 A. Two.  
 7 Q. And where were they found?  
 8 A. In the back, on the backside of the center  
 9 console where the cup holders are for your consoles.  
 10 Q. Okay. So they were in the cup holders for, I  
 11 guess, passengers in the back seat?  
 12 A. Correct.  
 13 Q. BMC-12, what does this represent?  
 14 A. A straw from the cup, the actual straw that was  
 15 removed from the cup.  
 16 Q. So is it correct to say that you collected liquid  
 17 from the Dairy -- from the cup and also the straw, and  
 18 you've marked each either as 11 and now 12 for the straw;  
 19 is that correct?  
 20 A. That is correct.  
 21 Q. 13, what is shown here?  
 22 A. It's going to represent the liquid that was  
 23 collected from the Dairy Queen cup.  
 24 Q. The second one?  
 25 A. The second one, correct.

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 1 below -- just above the placard marked 6; is that correct?  
 2 A. Correct, yes.  
 3 Q. BMC-07, what was that?  
 4 A. This is a tray or a shelf, a drawer to a jewelry  
 5 box that was found in the -- shoved in between the  
 6 console, the center console of the vehicle and the  
 7 passenger side seat.  
 8 Q. Okay. And this shows a different further-back  
 9 view of the same item; is that correct?  
 10 A. That is correct.  
 11 Q. BMC-08 is -- what is that?  
 12 A. 08 is also going to be a swab of the interior  
 13 front door, front driver, driver -- let's see, passenger  
 14 side door.  
 15 Q. All right. Is BMC-09 a gold earring recovered  
 16 within the vehicle?  
 17 A. It is.  
 18 Q. And where was it found?  
 19 A. It was found in the front passenger seat.  
 20 Q. Okay.  
 21 A. Under the front passenger seat is where the --  
 22 where it was found.  
 23 Q. BMC-10, was it also a swab?  
 24 A. Yes, a swab of the -- BMC-10 would be a swab of  
 25 the interior driver door handle.

85  
 1 Q. You can see the other one just on top of it; is  
 2 that correct?  
 3 A. That is.  
 4 Q. 14, what is shown here?  
 5 A. Is representing the straw that was collected from  
 6 the cup, on the cup, No. 13 cup.  
 7 Q. The BMC-15, what is shown here?  
 8 A. The keyless remote entry.  
 9 Q. Okay.  
 10 A. For the vehicle.  
 11 Q. It was collected as well?  
 12 A. Correct.  
 13 Q. BMC-16, what are we seeing here?  
 14 A. 16 is representing a polo shirt, collared shirt  
 15 that was found on top of the headrest of the driver seat,  
 16 I believe, yeah, driver seat.  
 17 Q. Okay. BMC-17, what was collected under this  
 18 number?  
 19 A. That's going to be a Dairy Queen sack that I  
 20 found in the bed of the truck.  
 21 Q. Is that a better view of that same sack?  
 22 A. Yes.  
 23 Q. BMC-18, what is this?  
 24 A. That's a latent print on the driver side door,  
 25 exterior door handle or exterior door.

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1 Q. Okay. I think I misspoke earlier. I said  
 2 BMC-11, but BMC-18 is actually the third latent print that  
 3 was -- that we've spoken about from the truck; is that  
 4 correct? We have BMC-01, 02, and now 18?

5 A. Yes, that is correct.

6 Q. And was this latent print recovered by you on  
 7 that date, June 30th, 2010?

8 A. Yes, sir, it was.

9 Q. 19, what are we seeing here?

10 A. A CD, audio CD that was found in the pocket of  
 11 the lower center console.

12 Q. Okay. Is that -- that appears to be to the right  
 13 of the driver?

14 A. That's correct, driver side, yes.

15 Q. BMC-20, what is shown here?

16 A. It's a shoe impression on the Nerf bar step rail  
 17 that's going into the truck. The exterior side of the  
 18 truck on the driver side, the step rail, that's a shoe  
 19 impression.

20 Q. Okay. And 21, what is BMC-21?

21 A. 21 is on the passenger side of the vehicle. It's  
 22 an impression that -- a block pattern, believed to be a  
 23 shoe impression of some kind.

24 Q. Okay. So on the driver side you had a -- the  
 25 impression that was more visible on this is a different

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1 what you're speaking to?

2 A. Yes.

3 Q. Okay. It was collected as well, the packaging;  
 4 is that true?

5 A. Yes.

6 Q. Now, BMC-23, what is this item?

7 A. It's a green lighter that was found in the center  
 8 console.

9 Q. And it was collected as well?

10 A. Yes.

11 Q. Okay. BMC-24, and apparently 25 as well, what  
 12 is -- what was collected here?

13 A. 24 is representing the lottery ticket that was  
 14 found in the front passenger floorboard, and then 25 is  
 15 the garage door opener. You can --

16 Q. Might be better seeing it here?

17 A. There you go. Yeah, you can see it there.

18 Q. All right. BMC-26, what's shown here?

19 A. It's representing an oily spot, some form of  
 20 transfer that was on the passenger side window.

21 Q. All right. Was a swab obtained from this area?

22 A. Yes.

23 Q. Finally, BMC-27, what's shown here?

24 A. A CD that was pulled out of the actual CD player  
 25 of the vehicle.

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1 pattern than on the driver side?

2 A. That's correct.

3 Q. You say it was a block pattern?

4 A. Yes.

5 Q. BMC-22, what is shown here? What was collected?

6 A. That is a CD case charger -- I'm sorry. A  
 7 cellular phone charger that was found in the -- in the  
 8 back seat of the truck. We did not locate the actual  
 9 charger though, just the case.

10 Q. So it's the plastic packaging that was collected;  
 11 is that true?

12 A. Correct, yeah.

13 Q. Is that because you did some -- what, as far as  
 14 your attempt to obtain prints from the inside of the  
 15 truck, how do you go about that?

16 A. In this, in this case, we used what I briefly  
 17 mentioned earlier, the super glue method, the fuming  
 18 method, where we actually fumed the interior of the  
 19 truck. And you can see a little bit there on the C -- I  
 20 keep calling it CD case, I'm sorry -- on the cellular  
 21 packaging, the phone charger packaging where it's kind of  
 22 a white ash look color on the plastic, and that's the  
 23 results that you get when you fume an item. There you go.

24 Q. Okay. So the whitish, I guess, tint to the  
 25 red -- what appears to be like the plastic over the red is

1 Q. All right. So it was, when -- before it was  
 2 pulled out, it was -- apparently had been inserted as if  
 3 to play; is that correct?

4 A. Yes, it was.

5 Q. So you had to push the, I guess, the button to --  
 6 to eject it; is that correct?

7 A. Correct.

8 Q. All right. And this is the CD that was in the  
 9 player at the time that you did this processing; is that  
 10 correct?

11 A. That is correct.

12 Q. All right. If you would be kind enough to open  
 13 this. I believe it contains multiple exhibits marked 3,  
 14 5, 8, 10, 12 and 14.

15 A. (Witness complied.)

16 Q. What is contained within the packaging that you  
 17 just opened?

18 A. Swabs.

19 Q. And is items BMC-12 and 14, what are they?

20 A. 14 is going to be a straw from the Dairy Queen  
 21 cup.

22 Q. Okay. And 12?

23 A. 12 is going to be straw from a Dairy Queen cup.

24 Q. Okay. Place all of those in here.

25 A. (Witness complied.)

1 MR. CHAMBLESS: Judge, at this time, Your  
 2 Honor, we would like to offer four swabs which are marked  
 3 BMC-3, 5, 8 and 10, and then the two straws marked  
 4 BMC-12 and 14. They're marked appropriately within the  
 5 smaller boxes here.

6 And so I've marked those items State's  
 7 Exhibit 315 dash 3, 5, 8, 10, 12 and 14. The boxes for  
 8 record only, the envelope for record only, and the items  
 9 themselves for all purposes.

10 MR. WESTFALL: No objection as offered, Your  
 11 Honor.

12 THE COURT: Admitted.  
 13 (State's Exhibit No. 315 admitted.)  
 14 (State's Exhibit No. 315-A admitted for  
 15 record purposes only.)

16 Q. (BY MR. CHAMBLESS) Be kind enough to open this  
 17 one, please, sir.

18 A. Yeah, audio CDs.

19 Q. We've seen a picture of this. Are these the four  
 20 DVDs or CDs that were on the visor of the Tundra and  
 21 collected by you and Max Courtney that date?

22 A. Correct. That would be the cigarette case.  
 23 (Pause in proceeding.)

24 MR. CHAMBLESS: Offer what's marked as  
 25 BMC-04 as State's Exhibit 316, being the four DVDs, the

1 packaging as 316-A for record purposes; BMC-06 as 317,  
 2 and the packaging as 317-A for record.

3 MR. WESTFALL: No objection as offered, Your  
 4 Honor.

5 THE COURT: Admitted.  
 6 (State's Exhibit No. 316 - 317 admitted.)  
 7 (State's Exhibit No. 316-A, 317-A admitted  
 8 for record purposes only.)

9 Q. (BY MR. CHAMBLESS) If you would be kind enough  
 10 to open this, please, sir.

11 A. (Witness complied.)

12 Q. What is BMC-07?

13 A. A shelf from a jewelry box, jewelry drawer.

14 Q. Okay. This was collected by you. You indicated  
 15 it was found on the passenger side between the seat and  
 16 the console; is that correct?

17 A. Yes.

18 MR. CHAMBLESS: Offer BMC-07, the drawer as  
 19 318, the packaging as 318-A.

20 MR. WESTFALL: No objection as offered, Your  
 21 Honor.

22 THE COURT: Admitted.  
 23 (State's Exhibit No. 318 admitted.)  
 24 (State's Exhibit No. 318-A admitted for  
 25 record purposes only.)

1 THE WITNESS: Earring.

2 MR. CHAMBLESS: Offer BMC-09, a gold earring  
 3 as State's Exhibit No. 319, the packaging as 319-A.

4 THE WITNESS: Correct.  
 5 MR. CHAMBLESS: For record purposes.

6 MR. WESTFALL: No objection.

7 THE COURT: Admitted.

8 (State's Exhibit No. 319 admitted.)

9 (State's Exhibit No. 319-A admitted for  
 10 record purposes only.)

11 THE WITNESS: Liquid sample.

12 Q. (BY MR. CHAMBLESS) Is this the liquid sample  
 13 that was collected by you from the Dairy Queen -- one of  
 14 the Dairy Queen cups found in the rear cup holder area of  
 15 the Tundra?

16 A. Yes, it was.

17 MR. CHAMBLESS: Offer State's -- offer  
 18 BMC-11, the liquid sample, as 320, and the packaging as  
 19 320-A for record purposes.

20 MR. WESTFALL: No objection, Your Honor.

21 THE COURT: Admitted.

22 (State's Exhibit No. 320 admitted.)  
 23 (State's Exhibit No. 320-A admitted for  
 24 record purposes only.)

25 Q. (BY MR. CHAMBLESS) What is this item?

1 A. Liquid sample from the Dairy Queen cup, the  
 2 second Dairy Queen cup.

3 MR. CHAMBLESS: Offer BMC-13 as State's  
 4 Exhibit No. 321, and the packaging as 321-A.

5 MR. WESTFALL: No objection, Your Honor, as  
 6 offered.

7 THE COURT: Admitted. Admitted.

8 (State's Exhibit No. 321 admitted.)

9 (State's Exhibit No. 321-A admitted for  
 10 record purposes only.)

11 THE WITNESS: This is going to be the keyless  
 12 remote.

13 MR. CHAMBLESS: Offer the remote that was  
 14 collected by Mr. Blansit as State's Exhibit No. 322, his  
 15 marking BMC-15, the packaging as 322-A for record.

16 MR. WESTFALL: No objection as offered, Your  
 17 Honor.

18 THE COURT: Admitted.

19 (State's Exhibit No. 322 admitted.)

20 (State's Exhibit No. 322-A admitted for  
 21 record purposes only.)

22 Q. (BY MR. CHAMBLESS) What is contained within that  
 23 exhibit?

24 A. It's going to be the polo-styled collared shirt  
 25 that was found on the headrest of the driver side seat, I

1 believe.

2 Q. And this was collected by you on that date from  
3 within the Tundra of Nancy -- that being Nancy Weatherly's  
4 vehicle; is that correct?

5 A. Correct.

6 MR. CHAMBLESS: Offer the polo shirt, BMC-16,  
7 as State's Exhibit No. 323, the packaging as 323-A.

8 MR. WESTFALL: No objection as offered, Your  
9 Honor.

10 THE COURT: Admitted.

11 (State's Exhibit No. 323 admitted.)

12 (State's Exhibit No. 323-A admitted for  
13 record purposes only.)

14 Q. (BY MR. CHAMBLESS) What is this?

15 A. This is the Dairy Queen sack that was found in  
16 the bed of the truck.

17 Q. Okay.

18 A. Ketchup packaging.

19 MR. CHAMBLESS: Offer BMC-17, being the Dairy  
20 Queen sack as State's Exhibit No. 324, the packaging as  
21 324-A for record purposes.

22 MR. WESTFALL: No objection as offered, Your  
23 Honor.

24 THE COURT: Admitted.

25 (State's Exhibit No. 324 admitted.)

1 THE BAILIFF: Yes, sir.

2 THE COURT: You may bring the Jury in.  
3 (Jury present.)

4 THE COURT: Thank you. You may be seated.

5 Q. (BY MR. CHAMBLESS) Okay. We were -- we had  
6 talked about the items that you had collected from the  
7 house of Nancy Weatherly and we were at the end of the  
8 items or marking the items that you had collected from her  
9 truck, the 2003 Tundra.

10 Would you look at what's marked as BMC-20,  
11 open that and see if you recognize that, please, sir.

12 A. (Witness complied.)

13 Q. What is BMC-20?

14 A. It's going to be a dust impression with class  
15 characteristics with chevron characteristics on a dust  
16 impression.

17 Q. Where was this impression taken from, what part  
18 of the truck?

19 A. It was on the exterior step rail of the driver  
20 side of the vehicle.

21 Q. All right. Was this impression made by you?

22 A. I'm sorry?

23 Q. Was this impression made by you?

24 A. It was developed by me, yes.

25 MR. CHAMBLESS: Okay. Right. That was a

1 (State's Exhibit No. 324-A admitted for  
2 record purposes only.)

3 Q. (BY MR. CHAMBLESS) Show you what's marked  
4 BMC-19, if you could open that, please, sir. What is  
5 BMC-19?

6 A. Be the audio CD that was found in the center  
7 console.

8 MR. CHAMBLESS: Offer BMC-19, a CD, as  
9 State's Exhibit No. 325, packaging as 325-A for record.

10 MR. HEISKELL: No objection as offered, Your  
11 Honor.

12 THE COURT: Admitted.

13 (State's Exhibit No. 325 admitted.)

14 (State's Exhibit No. 325-A admitted for  
15 record purposes only.)

16 THE COURT: At this time the Court will  
17 recess for lunch. Be back and ready to go at 1:15.

18 (Recess taken from 11:57 a.m. to 1:18 p.m.)

19 (Jury not present.)

20 THE COURT: State present and ready?

21 MR. CHAMBLESS: Ready.

22 THE COURT: Defense present and ready?  
23 Defendant present?

24 MR. WESTFALL: Yes. He is, Your Honor.

25 THE COURT: Jury ready?

1 critical distinction there. Thank you.

2 THE WITNESS: Sorry.

3 MR. CHAMBLESS: We'd have to stop and ask if  
4 you had been warned here or something.

5 Offer the impression as State's Exhibit 326,  
6 his marked BMC-20, and the packaging as 326-A.

7 MR. WESTFALL: No objection as offered, Your  
8 Honor.

9 Q. (BY MR. CHAMBLESS) BMC-21, if you would open  
10 that and see if you recognize that item.

11 A. This here is a dust impression. It was taken on  
12 the side exterior step rail on the passenger side of the  
13 vehicle.

14 Q. Okay.

15 A. That I did develop.

16 MR. CHAMBLESS: Thank you. Offer this as his  
17 marked BMC-21, State's Exhibit offered as 327, packaging  
18 as 327-A for record purposes.

19 MR. WESTFALL: No objection as offered, Your  
20 Honor.

21 THE COURT: Admitted.

22 MR. CHAMBLESS: Show you what's marked -- I'm  
23 sorry.

24 THE COURT: Admitted.

25 (State's Exhibit No. 327 admitted.)

1 (State's Exhibit No. 327-A admitted for  
2 record purposes only.)

3 Q. (BY MR. CHAMBLESS) Show you BMC-22, if you  
4 could open that, please, sir.

5 A. Cell phone chargers that were found in the back  
6 seat of the vehicle.

7 MR. CHAMBLESS: Offer these, his mark is  
8 BMC-22, State's Exhibit 328 offered for all purposes, the  
9 packaging, 328-A for record only.

10 MR. WESTFALL: No objection, Your Honor.

11 THE COURT: Admitted.

12 (State's Exhibit No. 328 admitted.)

13 (State's Exhibit No. 328-A admitted for  
14 record purposes only.)

15 Q. (BY MR. CHAMBLESS) Show you what's marked  
16 BMC-23. If you would open that and see if you recognize  
17 that item.

18 A. Be the green lighter that was found in the center  
19 console.

20 MR. CHAMBLESS: I offer the green lighter,  
21 which is his mark BMC-23, marked now as State's Exhibit  
22 329 for all purposes, the packaging for record as 329-A.

23 MR. WESTFALL: No objection, Your Honor.

24 THE COURT: Admitted.

25 (State's Exhibit No. 329 admitted.)

100 1 garage opener is marked and offered as State's Exhibit 331  
2 for all purposes, the packaging for record as 331-A.

3 MR. WESTFALL: No objection, Your Honor.

4 THE COURT: Admitted.

5 (State's Exhibit No. 331 admitted.)

6 (State's Exhibit No. 331-A admitted for  
7 record purposes only.)

8 Q. (BY MR. CHAMBLESS) Show you now BMC-236. If  
9 you would open that, and ask if you recognize that item.

10 A. It's going to be the swab of the oily substance  
11 that was found on the right front passenger window.

12 Q. Okay. So this is a swab contained within a box,  
13 a small box, which is the appropriate container for the  
14 swab, of the oily spot on the front windshield; is that  
15 correct?

16 A. Uh-huh, yes, front -- right-front window, yeah.

17 MR. CHAMBLESS: Offer as his exhibit 26, the  
18 packaging marked as 332-A for record, the exhibit as 332  
19 being the swab of the oily spot contained within the box,  
20 which is offered for record purposes.

21 MR. WESTFALL: No objection.

22 THE COURT: Admitted.

23 (State's Exhibit No. 332 admitted.)

24 (State's Exhibit No. 332-A admitted for  
25 record purposes only.)

101 1 (State's Exhibit No. 329-A admitted for  
2 record purposes only.)

3 Q. (BY MR. CHAMBLESS) Show you now BMC-24.  
4 Would you open that and tell us if you recognize that  
5 item.

6 A. Be a lottery ticket found in the floorboard of  
7 the pickup.

8 (Sotto voce discussion.)

9 MR. CHAMBLESS: Okay. Lottery ticket, his  
10 mark is BMC-24, marked as State's Exhibit and offered as  
11 State's Exhibit 330 for all purposes, the packaging marked  
12 as 330-A for the record.

13 MR. WESTFALL: No objection, Your Honor.

14 THE COURT: Admitted.

15 (State's Exhibit No. 330 admitted.)

16 (State's Exhibit No. 330-A admitted for  
17 record purposes only.)

18 Q. (BY MR. CHAMBLESS) Show you what's marked  
19 BMC-25. If you would open that, please, sir.

20 A. Be the garage door opener.

21 Q. Okay. It was found, I believe, next to the  
22 lottery ticket in the floor of the -- behind the passenger  
23 seat; is that correct?

24 A. That is correct.

25 MR. CHAMBLESS: Okay. Your mark BMC-25, the

103 1 Q. (BY MR. CHAMBLESS) Hand you now BMC-27.  
2 What is BMC-27?

3 A. It appears as the CD that came out of the case,  
4 the CD, audio CD player in the Toyota Tundra.

5 MR. CHAMBLESS: His mark BMC-27, offered as  
6 State's Exhibit 333 for all purposes, the packaging marked  
7 as 333-A for record purposes.

8 MR. WESTFALL: No objection, Your Honor.

9 THE COURT: Admitted.

10 (State's Exhibit No. 333 admitted.)

11 (State's Exhibit No. 333-A admitted for  
12 record purposes only.)

13 Q. (BY MR. CHAMBLESS) Finally, if you would locate  
14 BMC-01, 02 and 18.

15 A. 01, 02 and 18?

16 Q. 18, yes, sir.

17 A. Okay.

18 Q. Have you located those?

19 A. Yes.

20 Q. What are BMC-01, 02 and 18?

21 A. They're latent prints, fingerprints that were  
22 developed off of the driver side door, passenger side door  
23 handle, and the passenger side door handle of the pickup.

24 Q. Okay. And were those developed by you on that  
25 date, June 30th of 2010?

1 A. Yes, they were. 2 Q. Okay. Now, collectively all of the items that 3 were taken or processed from the Tundra and from the house 4 of Nancy Weatherly, was it retained and possessed by you 5 and transferred to a secure location at the Mansfield 6 Police Department at the end of your work? 7 A. Yes. 8 MR. CHAMBLESS: Okay. Pass the witness. 9 CROSS-EXAMINATION 10 BY MR. WESTFALL: 11 Q. Officer Blansit, I'm Greg Westfall. 12 A. Hello. 13 Q. How long have you been doing crime scene work? 14 A. Started in 2007, 2008, I believe it was. 15 Q. So coming up on five years? 16 A. Yes. I'm trying to think. I've been working 17 with Max for the last two and a half years. I was 18 assigned to the unit a couple years prior to that but 19 wasn't near as involved or active as I was till Max came 20 along. 21 Q. Right. How long you been with Mansfield? 22 A. This is going on my eighth year in the Patrol 23 Division. 24 Q. And so you've been in Crime Scene for five years? 25 A. Been involved in it, yes.	104 1 company in Florida. I can't think of their name right 2 now, but I've gone through a -- more or less, it's an 3 advanced photography school. 4 Q. What do you do in the advanced photography 5 school? 6 A. In the advanced photography school, you do more 7 toward taking photographs of the close-up photographs, 8 what is known as examination-quality photographs to where 9 they can be basically viewed from a one-to-one ratio to 10 where if you have -- say you're taking a photograph of a 11 fingerprint; you would be able to take that photograph in 12 a way to where the person who was analyzing the 13 fingerprint would be able to take the known fingerprint 14 and have them at the exact same size. And in order to do 15 that, you would have to put your scales in there and 16 properly take the photograph with the right lighting, and 17 it involves some of those things. 18 Q. And not shake it around? 19 A. I'm sorry? 20 Q. And not shake it around? 21 A. Oh, yeah. A lot of those photographs require a 22 tripod actually. The human just cannot hold the camera 23 still enough in order to get those kind of photographs. 24 Q. Y'all did -- y'all did several photographs with 25 fingerprints in this case?
105 1 Q. Did you do -- do you do patrol also? 2 A. Yes. 3 Q. And then Crime Scene on like an as-needed basis? 4 A. Correct, yeah. 5 Q. And then Max, this is all he does? 6 A. Yes. 7 Q. Have you gone to other schools? 8 A. Yes, I have. 9 Q. Like what? 10 A. Well, in-house training. We are fortunate to 11 have Max Courtney as our Director of Crime Scene, and he 12 is able to put on numerous different classes. And just 13 training side-by-side with him does count for training in 14 itself. 15 In addition to that, I've gone through 16 conferences and different schools through -- that is put 17 on through the University of West Virginia. They're 18 week-long classes that you can go through that are just, 19 you know, the theory of crime scene protection and 20 collection of evidence and processing the evidence. 21 In addition to that, I have gone through 22 latent print training to develop prints and somewhat 23 analyze the prints to a certain level. Other trainings 24 include through the -- can't think who it was through 25 right now. It was a -- it's photography classes through a	107 1 A. Yes. 2 Q. And so you have the technology, and I guess the 3 technology has been around for a while to be able to do 4 fingerprint examinations off pictures, hasn't it? 5 A. Yes, sure, yes. 6 Q. You know, it is true that we might apply super 7 glue fumes to a hundred different surfaces, but then out 8 of all of that, we might only get one fingerprint? 9 A. Very true, yes. I would agree to that. 10 Q. But that's what makes finding a print all that 11 more important, doesn't it? 12 A. I'm sorry? 13 Q. I mean, so it's the finding the print that's 14 important, not the fact that we didn't find the prints on 15 the other things, right? 16 A. Yes. 17 Q. Because it's really not much we can read into, 18 the fact that we didn't find prints; isn't that true? 19 A. Yes. 20 Q. Because, you know, if I -- if I handle this 21 remote and set it down, and you super glue it and you find 22 no fingerprints on there, I mean, you just saw me handle 23 it? 24 A. Correct. 25 Q. Obviously the prints didn't take?

1 A. That's correct, yes.  
 2 Q. And so but when we find a print on something,  
 3 then that is significant?  
 4 A. Correct.  
 5 Q. And the same thing about contact DNA, I mean, you  
 6 tested several places inside that Tundra for contact DNA,  
 7 didn't you?  
 8 A. I did.  
 9 Q. And, in fact, Max, I guess, was the one who did  
 10 it, but you knew that the oily spot in the back was being  
 11 swabbed for contact DNA as well?  
 12 A. Yes.  
 13 Q. And that's the reason why you did those swabs  
 14 inside the truck, right?  
 15 A. Absolutely, yes.  
 16 Q. Because that's for the DNA?  
 17 A. Yes, sir.  
 18 Q. And the straw as well, you packaged the straw so  
 19 it could be tested for DNA, both the straws?  
 20 A. Yes, sir.  
 21 Q. In the D.Q. cups?  
 22 A. Yes.  
 23 Q. Do you remember those?  
 24 A. Oh, yes.  
 25 Q. And, you know, DNA that comes out of something

1 accurately depict what they show?  
 2 A. Yes, sir.  
 3 MR. WESTFALL: Thank you. Let me get them  
 4 in.  
 5 Your Honor, we move for the admission of  
 6 Defendant's 13 through 20.  
 7 MR. CHAMBLESS: No objection.  
 8 THE COURT: Admitted.  
 9 (Defendant's Exhibit Nos. 13 - 20 admitted.)  
 10 MR. WESTFALL: Thank you, Your Honor.  
 11 Q. (BY MR. WESTFALL) I'm going to come back to the  
 12 pictures. I want to write down some of the stuff you  
 13 collected. Okay. Thanks.  
 14 Okay. Some of this you collected; some of it  
 15 I think you probably know about. Already in evidence is  
 16 Kniffen's No. 15 and 16, the Bud Light beer can and Bud  
 17 Light beer bottle. Do you remember those? Came out of  
 18 the bed of Nancy Weatherly's truck.  
 19 A. I don't recall those.  
 20 Q. Okay. Fair enough. Hold on just one second.  
 21 I don't guess you've seen them, just a Bud  
 22 Light bottle and Bud Light can. Do you see them in your  
 23 records anywhere?  
 24 A. Can you give me just a minute? I just don't  
 25 recall that at all.

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 1 that's been in somebody's mouth is actually a bit of a --  
 2 a little bit of a higher percentage chance of finding DNA  
 3 because we have the cells inside our mouth, right?  
 4 A. Yes.  
 5 Q. And like if you find cigarette butts at a crime  
 6 scene, you're always going to collect those?  
 7 A. Correct.  
 8 Q. Because a lot of times there's going to be DNA  
 9 inside those filters?  
 10 A. Right.  
 11 Q. But, once again, you know, we can look at those  
 12 straws, we can test those straws and they can come back  
 13 inconclusive or no DNA, and there's not much we can read  
 14 into that?  
 15 A. That's -- that's correct.  
 16 Q. But when we find DNA on the straws, that's  
 17 something?  
 18 A. It is.  
 19 Q. And then the footprint impressions as well, and  
 20 that was the last stuff y'all put in was the footprint  
 21 impressions?  
 22 A. Yes, yes.  
 23 Q. And let me just do this. I'm showing you what's  
 24 been marked for identification as Defendant's 13 through  
 25 20. And just take a look and tell me, do those fairly and

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 1 Q. And in all fairness, I've never seen anything  
 2 that said you even touched them.  
 3 A. Okay.  
 4 Q. Yeah, so --  
 5 A. At this time I do not recall those being  
 6 collected by me.  
 7 Q. Yeah, the testimony was that Kniffen collected  
 8 them, gave them to Gaudet who then did some fingerprint  
 9 work on them --  
 10 A. Not even sure who Kniffen is.  
 11 Q. -- for DNA. Okay.  
 12 A. Yeah.  
 13 Q. So BRB-03 though, newspaper page, right?  
 14 A. BRB-03, yes.  
 15 Q. Now, this is Defendant's 13. And the newspaper  
 16 page that you collected is this right here, right?  
 17 A. Yes, that is the newspaper that was collected,  
 18 yes.  
 19 Q. And what is this thing?  
 20 A. That's called an electromagnetic dust lifter.  
 21 Would you like for me to explain?  
 22 Q. Please.  
 23 A. Okay. This is a machine that is used to -- you  
 24 put a film, it's more of an aluminum-type film that will  
 25 go over the top of the newspaper. Through electrostatic,

1 this machine, the wires that you see, you connect one of  
 2 them to the film itself; the antenna lays beside it.

3 Now, I obviously cannot explain the in-depths  
 4 of how the machine actually works, but what it does is it  
 5 causes a -- a friction between the aluminum foil or the  
 6 film that goes over the top of the paper and it sucks down  
 7 to the top of this paper. And what it does is any dust  
 8 that is on the paper or on the surface that you are  
 9 processing, it will lift that dust and it will stick to  
 10 your aluminum foil or to your -- to your film that you use  
 11 through a -- yeah.

12 Q. Did you do the electrostatic dust print or did  
 13 Max?

14 A. Max did.

15 Q. Okay. And the print itself, I think, was  
 16 numbered BRB-03-A. Have you seen that come into evidence  
 17 yet?

18 A. I don't believe.

19 Q. The electrostatic print that was collected from  
 20 this?

21 A. No, no, I haven't.

22 Q. I'll show you Defendant's 17. This is a print  
 23 that came off of the driver side of the Tundra.

24 A. Yes, sir.

25 Q. I don't know if it's even possible to see. I

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1 of the two Dairy Queen cups?

2 A. Yes, sir.

3 Q. This one would be on the driver side, I guess,  
 4 and that would be on the passenger side?

5 A. Yeah, yes, sir.

6 Q. So BRB-03-A is the dust print from the newspaper  
 7 page, right?

8 A. Yes, sir.

9 Q. BMC-12, as I recall, is the straw from the  
 10 passenger side D.Q. cup?

11 A. That is correct.

12 Q. Passenger back?

13 A. Yes.

14 Q. And the passenger back, that's also where that  
 15 oily spot was too, right?

16 A. I would have to refer to my notes. I thought it  
 17 was on the front window. Was it on the back?

18 Q. I've got the picture right here.

19 A. Okay.

20 Q. I guess you can't really tell from this. Does  
 21 that refresh your memory at all?

22 A. That's going to be on the front. It's interior  
 23 front passenger side door.

24 Q. Okay. So passenger side but on the front?

25 A. Yes, sir.

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1 guess this is it a little bit closer up. Is that the  
 2 print?

3 A. Yes, sir.

4 Q. Now, do you do any footprint comparison work?

5 A. No, I do not, sir.

6 Q. Don't have any knowledge of it?

7 A. No.

8 Q. And then Defendant's 19 may be duplicative of  
 9 something already in, but there's just this avalanche of  
 10 pictures. So this is BRB-27, and this is the CD that was  
 11 actually in the CD player?

12 A. Yes, sir.

13 Q. And you ejected it?

14 A. Yes, sir. It was ejected, yes, sir.

15 Q. Okay. And were you the one that took the latent  
 16 prints off of this?

17 A. It was -- it was fumed.

18 Q. Okay.

19 A. Was I -- restate your question. I'm sorry.

20 Q. Were you the one that developed the latent prints  
 21 on this CD?

22 A. It was fumed, and then later, I believe, it was  
 23 followed up with a dust lift, if I'm not mistaken, but  
 24 that was not done by me.

25 Q. Okay. Then these here are actually the placement

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1 Q. All right. And that was what again, BMC-26?

2 A. That's correct.

3 Q. And then BMC-27, that's the audio CD that came  
 4 out of the CD player.

5 Now, I've looked again at my notes and it  
 6 appears as though the two latent lifts are identified as  
 7 BMC-37. Does that mean Max took those?

8 A. Yes, uh-huh, that is correct.

9 Q. And then BMC-18, forgot that one. That's latent  
 10 print from the driver side door?

11 A. Exterior, yes.

12 Q. Yeah, okay. Okay. Now, tell me about those.

13 Where were those?

14 A. The latent prints?

15 Q. On the driver side door, where were they on the  
 16 door; do you remember?

17 A. I believe there was two, two of them. Let's see.

18 (Sotto voce.) It was above the handle, if I recall  
 19 correctly on that one. It was on the -- the door frame  
 20 going down to the door handle.

21 Q. Okay. So where you might have grabbed the door  
 22 just to close it like this?

23 A. Yeah.

24 Q. All right.

25 A. If I could see the photo, that would refresh my

1 memory a little bit better, but.

2 Q. Let me see if I can find it for you because I  
3 looked at them. There's this. That's 2, right?

4 A. Yes, sir, that would be 2.

5 Q. Seems like I'm finding every one except 18. I  
6 found 1. I found 24. Do you have it notated anywhere?

7 A. The exterior doors and the windows were  
8 processed. Yeah, two latent prints were developed off the  
9 exterior surface to the front passenger door. There's two  
10 of them that's been lifted. One was developed off the  
11 exterior surface of the front driver side door.

12 Q. That's just exterior surface of the front driver  
13 side door?

14 A. Yes, sir.

15 Q. Okay. Then we've got that. We'll go with that.  
16 And then BMC-20 is the footwear impression on the driver  
17 side door of the Tundra, right?

18 A. Yes, sir.

19 Q. Now, you also developed a -- some sort of an  
20 impression over on the passenger side?

21 A. Yes.

22 Q. Okay. You -- you preserved that and submitted  
23 that as well?

24 A. I did, sir.

25 Q. Part of the -- I guess the point of doing this is

117 1 to try to figure out what happened, the progression of  
2 events, isn't it?

3 A. Yes, sir.

4 Q. And I can't remember what exhibit it is, but in  
5 the house there is -- on the back bedroom, one of the back  
6 bedrooms there is what appeared to be a fresh blood stain  
7 on the box spring; is that true?

8 A. On the sheet that covers the box spring. I don't  
9 know how fresh it was, but, yes, there was a blood stain  
10 there.

11 Q. You can tell something is real old or if it's  
12 pretty new, can't you, or was it beyond that?

13 A. It was dry.

14 Q. Okay.

15 A. I can't put --

16 Q. Okay. Yeah. Once it's dry, it's dry, I guess?

17 A. Yes.

18 Q. We have heard evidence in this case from the  
19 Medical Examiner that the only thing that would have  
20 happened to Nancy Weatherly that would have caused her to  
21 bleed was the gunshot, and we know where that happened.  
22 So just the natural progression of things, the -- if that  
23 blood, which let's assume that that's Nancy Weatherly's  
24 blood on that box spring. Okay?

25 A. Uh-huh.

1 Q. That would have had to have happened after she  
2 was shot, if we assume that the blood was put there that  
3 day, right?

4 A. Yes and no.

5 Q. Okay.

6 A. Reason no, it could have been there before the  
7 mattress was flipped.

8 Q. I understand. But I said if we assume it was put  
9 there that day.

10 A. Yes, okay, I'll go with that. Sorry.

11 Q. And then the bullet underneath the deal, you said  
12 that the thing probably got moved on top of the bullet?

13 A. Yes.

14 Q. Which would have meant that the thing was moved  
15 after she was shot?

16 A. That would indicate that, yes.

17 Q. And things can get kicked around in crime scenes  
18 too?

19 A. Yes, they can.

20 Q. Do you have any idea which way the footprint was  
21 heading on -- that was on the newspaper, or is Max the  
22 person to ask about that?

23 A. I don't recall there being enough detail to  
24 determine that, but, yes, that would probably be a better  
25 question for Max.

1 Q. Okay. Give me one second. Did you do any of the  
2 processing on the stuff that was recovered later from Tat  
3 Man, or was that all Max also?

4 A. From who?

5 Q. From Hinojosa, Tat Man, the one who had the TV?

6 A. No.

7 Q. Did your work with this stop after the truck?

8 A. With the exception of helping them carry the TV  
9 back to the guy who came and picked it up from our office,  
10 I assisted them in carrying a TV to their -- to their car  
11 and that's it, yes.

12 Q. Okay. You did no further forensic testing or  
13 forensic work?

14 A. No, no.

15 MR. WESTFALL: All right. Very well. Thank  
16 you, Officer Blansit.

17 THE WITNESS: Yes.

18 REDIRECT EXAMINATION

19 BY MR. CHAMBLESS:

20 Q. Just a couple things I want to add to, I guess,  
21 this list here.

22 (Sotto voce discussion.)

23 BRB-23, what was that, do you recall?

24 A. BRB-23?

25 Q. Yes, sir.

1 A. That's the latent lift on the cassette tape case,  
2 the latch.  
3 Q. Okay. And where was the cassette case that the  
4 latent lift was found?  
5 A. In the west bedroom on the floor.  
6 Q. It was found in one of the bedrooms in Nancy  
7 Weatherly's house; is that correct?  
8 A. That is correct.  
9 Q. And BMC-21, which one was that?  
10 A. BMC-21?  
11 Q. Yes.  
12 A. That's the shoe print on the passenger side  
13 exterior step rail.  
14 Q. Okay. He asked you about the stain or the  
15 apparent blood stain on the mattress in the -- I guess the  
16 master bedroom; is that correct?  
17 A. Correct.  
18 Q. How big was that?  
19 A. Very small. Extremely small. We've got it in  
20 scale. Very small blood stain.  
21 Q. All right. A spot?  
22 A. A spot.  
23 Q. A very tiny spot; is that correct?  
24 A. That is correct, yes.  
25 Q. Okay. Now, could that spot of blood been on

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1 determine when that DNA was put on there?  
2 A. I'm not able to answer that question. I do not  
3 know if a DNA analysis would be able to determine the age  
4 of blood.  
5 Q. Okay. Now, for example, suppose there was DNA on  
6 a straw in the Tundra, for example, just hypothetically.  
7 Okay?  
8 A. Uh-huh.  
9 Q. And I'll represent to you that the Tundra was  
10 found in Fort Worth.  
11 A. Okay.  
12 Q. Okay. And so it would -- you would have to know,  
13 if you could determine when that straw or when that Dairy  
14 Queen cup or -- you would have to know something more  
15 about that to determine when that -- how that got there,  
16 wouldn't you?  
17 A. Yes, sir.  
18 Q. Could it have been put in there in Fort Worth, I  
19 mean, just hypothetically?  
20 A. Oh, yes, absolutely.  
21 Q. And it could have been put in there somewhere  
22 between, for example, Godley and Fort Worth?  
23 A. Could have.  
24 Q. All right. There's just a lot of possibilities  
25 there, correct?

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1 that -- was it on the mattress or the sheets or what was  
2 it on?  
3 A. It was on the box spring cover.  
4 Q. The box spring cover. As you think about that,  
5 is there a way to determine that it happened that day, a  
6 week before, a year before?  
7 A. Is there a way to determine that?  
8 Q. Yes, the time that that spot of blood was put  
9 there.  
10 A. I do not know of a way.  
11 Q. Okay. So it could have been put there -- it  
12 could have caused -- she could have had a -- if it were,  
13 for example, Nancy Weatherly's blood, just assuming, it  
14 could have been there a year before, correct?  
15 A. It could have been, yes.  
16 Q. Two years before?  
17 A. Yes.  
18 Q. A week before?  
19 A. Yes.  
20 Q. Or that day?  
21 A. Or that day, yes.  
22 Q. All right. Now, when we talk about DNA, for  
23 example, on a -- if DNA is able to be developed from  
24 examination by a DNA expert, they find it on a -- on a  
25 sample. Same question. Can you -- is it possible to

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1 A. Yes, there is.  
2 Q. All right. But if you found a print on a  
3 cassette case in the bedroom of Nancy Weatherly, do you  
4 think that would have significance and relevance for this  
5 case?  
6 A. Yes.  
7 MR. CHAMBLESS: Okay. Pass the witness.  
8 RECROSS-EXAMINATION  
9 BY MR. WESTFALL:  
10 Q. Why? Let's assume the print is Mark Soliz, okay?  
11 A. Okay.  
12 Q. And let's assume that the DNA is a guy named --  
13 MR. WESTFALL: What's his name, Mike?  
14 MR. HEISKELL: Shadow.  
15 MR. WESTFALL: I know Shadow, but what's his  
16 real name?  
17 MR. HEISKELL: Arturo Gonzales.  
18 Q. (BY MR. WESTFALL) Arturo Gonzales. Have you  
19 ever heard that name? He wouldn't have anything to do  
20 with anything you did, but his name has come into  
21 evidence.  
22 A. Okay.  
23 Q. Now, if Arturo Gonzales's DNA got on that straw  
24 and that straw got into the back seat of Nancy Weatherly's  
25 truck, I guess there's a point at which common sense needs

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1 to kind of -- because there's a lot of common sense that  
2 goes into crime scene work, isn't there?  
3 A. There's a lot of it, yes, sir.  
4 Q. And common sense would say that unless Nancy  
5 Weatherly and Mr. Gonzales knew each other, then it would  
6 be a little bit strange that his DNA would be inside that  
7 truck?  
8 A. It would be questionable, yes.  
9 Q. And it would be a little bit strange if his DNA  
10 was on a beer bottle that was in the bed of that truck?  
11 A. Yes, sir.  
12 Q. Perhaps not as strange as being inside the truck,  
13 but still?  
14 A. Right.  
15 Q. There's a lot of people in the world and --  
16 A. Absolutely.  
17 Q. -- the coincidences start to get layered on.  
18 So from an evidentiary standpoint, is that  
19 any less significant than the fact that Mark Soliz's  
20 fingerprint was there?  
21 A. Is it any less significant?  
22 Q. It's all significant, right?  
23 A. Yes, it is.  
24 Q. Because it's all evidence?  
25 A. That's correct.

1 Q. What do you make of the blood stain on the box  
2 spring?

3 A. With it being so small, just one drop, and where  
4 it was, I really don't have a professional opinion as to  
5 how it was transferred or whether it is a transfer off of  
6 a finger or if it was her nose that may have been bleeding  
7 or how it became there. Like I said, it's such a small  
8 spot that it's really hard to give an opinion as to how it  
9 was -- how it came about.

10 Q. Well, it sounds like the tendency is to believe  
11 that it actually predated this whole incident, just from  
12 what I'm hearing you say?

13 A. Um, yes and no at the same time. If you would  
14 allow me to explain it, I would. Okay.

15 The blood stain is collected for a number of  
16 reasons, whether we feel at the time that it is exactly  
17 relevant to our case or whether it's not irrelevant. The  
18 reason we collect it is not only for evidential value but  
19 it's also to exclude everyone else from the scene.

20 So if we would have left that there behind,  
21 it would have raised questions as to whose it is and why  
22 it's there and how it got there. And that's the reason  
23 why we collect things that may not come across as  
24 immediately relevant to our case.

25 Q. And I understand that as to relevance, but my

1 question was, it sounds like what I'm hearing you say is  
2 that to your mind, you believe this stain, there's a very  
3 good chance that it predated this incident?  
4 A. I cannot put a whole lot of weight on it, if that  
5 answers your question. I can't put a whole lot of weight  
6 on it.

7 MR. WESTFALL: It does, yes.  
8 THE WITNESS: Okay.  
9 MR. WESTFALL: Thank you.  
10 THE WITNESS: Okay.  
11 REDIRECT EXAMINATION  
12 BY MR. CHAMBLESS:  
13 Q. The fact is, there's no way to date a blood  
14 stain; is that true?  
15 A. Not to my knowledge, no.  
16 Q. The same thing is true about DNA. If I said  
17 there's no way to date when DNA is placed on an item;  
18 that correct?  
19 A. That's correct.  
20 Q. All right. Now, he asked you what's the relative  
21 significance. Let's think through this. Let's think or  
22 imagine that there is, say, Arturo Gonzales's DNA on the  
23 straw in the Dairy Queen cup in the back of the Tundra.  
24 Just hypothetically, okay?  
25 A. Okay.

1 Q. I guess the relevance or the significance of it  
2 is that at some point that you would tend to believe that  
3 Arturo Gonzales had sipped from that straw that was found  
4 in the back seat of the Tundra in Fort Worth; is that  
5 correct?  
6 A. Yes, it would be easy to believe that, yes.  
7 Q. There is no way to determine when that event  
8 occurred, correct, because you can't date DNA?  
9 A. That's correct.  
10 Q. The truck is -- in other words, it was Nancy  
11 Weatherly's truck, she owned it, and it should have been  
12 in Godley, Texas. Can you see that?  
13 A. Oh, yes.  
14 Q. But it was found in Fort Worth, however. So a  
15 truck can be moved?  
16 A. Uh-huh.  
17 Q. It's mobile. And so there's no way to determine  
18 when that straw or that Dairy Queen cup was placed in the  
19 Tundra, correct?  
20 MR. WESTFALL: Object to the leading, Your  
21 Honor.  
22 THE COURT: Overruled.  
23 Q. (BY MR. CHAMBLESS) Would that be true or not?  
24 A. True.  
25 Q. All right. The relevance and the significance of

1 the print on the cassette case is that it puts, if it's  
 2 Mark Soliz's, it puts Mark Soliz in her bedroom at her  
 3 house; is that true?

4 A. That is true.

5 MR. CHAMBLESS: Pass the witness.

6 MR. WESTFALL: You know, I have no further  
 7 questions. Thank you, Officer Blansit.

8 THE WITNESS: You're welcome, sir.

9 THE COURT: May the witness be excused?

10 MR. CHAMBLESS: Yes, Your Honor.

11 MR. WESTFALL: He may.

12 THE WITNESS: Is that a yes?

13 THE COURT: Yes, sir. Thank you.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 THE COURT: Take a short 15-minute recess.

17 Be back with the next witness.

18 (Recess taken from 2:11 to 2:30 p.m.)

19 (Jury not present.)

20 THE COURT: State ready to proceed?

21 MR. CHAMBLESS: Yes, Your Honor. I think by  
 22 agreement, Brandon Blansit has been excused from the rule,  
 23 is in the courtroom, if that's okay with Your Honor.

24 THE COURT: That's fine with me. Is that  
 25 okay?

1 THE COURT: Got to go around all the way past  
 2 the deputy.

3 THE WITNESS: All right, sir.

4 THE COURT: Please raise your right hand.

5 (Witness sworn.)

6 THE COURT: Thank you. Have a seat.

7 MAX COURTNEY,

8 Having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CHAMBLESS:

11 Q. Please state your name.

12 A. My name is Max Courtney.

13 Q. Mr. Courtney, what's your occupation?

14 A. I'm the Director of the Crime Lab and Crime Scene  
 15 Search for Mansfield Police Department.

16 Q. Okay. The lawyers here are well acquainted with  
 17 you, Mr. Courtney. Will you tell the Jury something about  
 18 your background and Crime Scene and Forensics and that.

19 A. All right, sir. Academically, I have a B.S. and  
 20 an M.S. in Chemistry, both of them from what's now West  
 21 Texas A & M University.

22 I went to work in 1970 at the Fort Worth  
 23 Police Crime Lab as a Criminalist/Forensic Scientist. I  
 24 stayed there till 1980. Took a full-time teaching job at  
 25 U.T. Arlington in Criminal Justice.

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 1 MR. WESTFALL: Yes, Your Honor.  
 2 THE COURT: Defense attorneys are present and  
 3 ready?

4 MR. HEISKELL: Yes.

5 THE COURT: Defendant is present?

6 MR. WESTFALL: He is, Your Honor.

7 THE COURT: The Court Reporter tells me that  
 8 I -- that she did not hear me say 326 and 326-A were  
 9 admitted. It's my recollection that that was the  
 10 footprint on the newspaper.

11 MR. HEISKELL: No -- 326, Your Honor?

12 THE COURT: 326.

13 MR. STRAHAN: -- impression on the driver  
 14 side, BMC-20, and the No. 326 was admitted for all  
 15 purposes, 326-A was admitted for record purposes only.

16 THE COURT: That's what I have on my -- on my  
 17 notes, but the Court Reporter did not have -- did not  
 18 agree. So it's admitted. 326 and 326-A is admitted.

19 (State's Exhibit No. 326 admitted.)

20 (State's Exhibit No. 326-A admitted for  
 21 record purposes only.)

22 THE COURT: You may bring in the Jury.  
 23 (Jury present.)

24 THE COURT: Thank you. You may be seated.

25 MR. CHAMBLESS: State calls Max Courtney.

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 1 In the meantime, I started my business, which  
 2 was Forensic Consultant Services in 1976. I left U.T.A.  
 3 in '86 and ran Forensic Consultant Services as a private  
 4 company doing forensic lab work and also crime scene work,  
 5 mostly for police departments but also for attorneys and  
 6 investigators and others.

7 I left there in 2005, went and took a  
 8 teaching appointment at Baylor University in the Forensic  
 9 Science program, stayed there three years, went to  
 10 Mansfield where I've been for the last three years.

11 Q. Thank you. Now, back in June of 2010,  
 12 specifically June 30th of 2010, were you working with the  
 13 Mansfield Police Department at that time?

14 A. Yes, sir.

15 Q. And did you receive a request and was it approved  
 16 that you and others come and assist or process a potential  
 17 crime scene in Godley, Johnson County, Texas?

18 A. Yes, sir.

19 Q. Okay. Tell us approximately what time you got to  
 20 the home of Nancy Weatherly in Godley, Texas.

21 A. I was logged in there at 10:24 a.m.

22 Q. Okay. Tell the Jury a little bit about your  
 23 mental decision-making, the processing that you go  
 24 through, the steps that you take and the steps that you  
 25 took that morning.

132 A. The first, I think, important thing is to try to  
1 assess what you have to work with, without messing  
2 something up. So you have to very carefully walk through  
3 the scene, and see what's here, what's there, and then  
4 make some decisions about how you're going to actually go  
5 about processing it.

7 We like to photograph everything in place  
8 before we start moving anything or changing anything. And  
9 then we process the evidence, collect the evidence, and  
10 secure it.

11 Q. Okay. It appears that you were at the Weatherly  
12 home for approximately maybe nine, ten hours; is that  
13 approximately correct?

14 A. That sounds about right, yes, sir.

15 Q. And we went through with Officer Blansit, I  
16 believe there were 24 items, 22 of which were collected  
17 from the house. And the Jury has seen pictures of that.  
18 But as you entered the house, I want to ask you about some  
19 of your observations.

20 First, of Nancy Weatherly, the body, as you  
21 first went in, what were your impressions and  
22 observations?

23 A. First thing I did was to try to assess how long  
24 she had been there. I raised her left leg as she was  
25 lying there a little bit, and it was where the knee was

133 1 down. The knee did not bend, so when I lifted the leg,  
2 the leg kind of came up without, well, like that, without  
3 the knee bending, which told me that rigor mortis was  
4 present, and that gave me an idea about the time she had  
5 been there.

6 Q. Now, tell us about rigor mortis and when does  
7 rigor begin to occur in a body, and how long does it last,  
8 approximately?

9 A. It's gonna depend on the circumstances, and on  
10 the individual, the environment, several factors. So what  
11 we can do is estimate. And rigor is going to start within  
12 a few hours after death. And this is just a stiffening of  
13 the muscles in response to decomposition of the body. And  
14 it's going to happen to all of us.

15 And it is complete anywhere from 8 to 12  
16 hours after death, and then it's going to start resolving  
17 after some hours, so that after 24 to 36 hours, it should  
18 be fully resolved.

19 Q. Okay. So it's a period of gradual, I guess,  
20 onset, becoming full rigor at between 8 to 12 hours; is  
21 that correct?

22 A. Correct.

23 Q. And then at some point, from that point between 8  
24 and 12 hours, some point between 24 and 36 hours then  
25 it -- the body no longer has that condition; is that fair

1 to say?

2 A. Yes, sir.

3 Q. Okay. So when you were looking at and observing  
4 her body and you raised her leg, that was the condition  
5 you observed at that time, that being about 10:30 that  
6 morning?

7 A. Yes, sir.

8 Q. What else did you notice about Nancy Weatherly?  
9 Any apparent injuries to her body?

10 A. Yes, sir.

11 Q. What did you notice?

12 A. I noticed a defect in the back of her head.

13 Q. Okay. The blood around her body, what -- do you  
14 have any observations about that?

15 A. I do.

16 Q. Tell the Jury about that.

17 A. There was blood on the edge of the table. And if  
18 I were facing north in the living room and looking at the  
19 table, this would be on the left side of the table, so  
20 that's going to be basically the southwest corner of the  
21 table as the table sat in the dining area. There's blood  
22 up on the corner there; the blood has run off the edge of  
23 the table, dripped onto the seat of a chair sitting  
24 beneath it, and then ran off of the chair and onto the  
25 floor beneath it.

135 1 And also, in my opinion, when the body fell,  
2 there was blood spattered from the floor up to the wall by  
3 it and also the floor around it.

4 Q. So did you feel like the spatter of the blood was  
5 from her head falling onto the floor?

6 A. That, and also the blood just dripping.

7 Dripping -- blood-drops falling into a pool of blood makes  
8 a very fantastic amount of spatter coming off of it.

9 Q. Okay. What was the -- how was she dressed; do  
10 you recall?

11 A. She was wearing -- I don't -- I can look at the  
12 colors and everything, but she was basically wearing what  
13 you might term as pajamas or the equivalent thereof.

14 Q. Okay. Now, we've heard from Officer Blansit  
15 about each of the items or almost all of the items that  
16 were collected, but there's two or three, I think, that  
17 you were involved with that we want to address.

18 First of all, there was a newspaper sheet  
19 that was found on the floor in the house; is that correct?

20 A. Yes, sir.

21 Q. Do you recall where that was found?

22 A. It was found kind of on the northeast edge of the  
23 table, and then going more or less between. And if you're  
24 standing about to walk down the hallway, you've got the  
25 kitchen on your right and the dining area on your left,

1 and kind of a, I guess, a no-man's-land in between there,  
 2 where it's not kitchen and it's not dining area and it's  
 3 not hallway. So basically that's where the piece of paper  
 4 was found.

5 Q. Okay. Show you what has been admitted as State's  
 6 Exhibit 273. It's -- and attached to it is some  
 7 packaging, and ask you to take a look at that, see if you  
 8 recognize that.

9 A. Yes, sir.

10 Q. All right. What is that?

11 A. This is the sheet from that newspaper.

12 Q. Okay. Now, did you -- why did the sheet of  
 13 newspaper catch your attention? What was it about the  
 14 newspaper that was significant to you?

15 A. It was in a traffic pattern that one would use to  
 16 go through the house, and I thought it likely that there  
 17 might be footwear impressions on it.

18 Q. Okay. Did you utilize a certain process with  
 19 respect to that sheet of newspaper to attempt to draw a  
 20 footwear impression from it?

21 A. Yes, sir.

22 Q. What equipment did you use?

23 A. It's called an electrostatic dust print lifter.

24 Q. How does that work?

25 A. Basically you take a sheet of mylar film like you

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1 partial footwear impression.

2 Q. Okay. If we open that, would it be possible to  
 3 look and see the impression inside?

4 A. Maybe.

5 Q. Or would that destroy the --

6 A. No, it would not destroy it. It could be  
 7 preserved. I don't know; I haven't looked at it since I  
 8 sealed it up a long time ago, so I don't know what's in  
 9 there now.

10 Q. All right. If you would, would it be -- what  
 11 would be the best way to open this and view this? Is it  
 12 something we should take out or leave within the box and  
 13 just open the flap or what would you recommend?

14 A. I would open the flap.

15 Q. Okay. If you wouldn't mind, use these scissors  
 16 or whatever you think appropriate, and let's just open the  
 17 flap here.

18 A. (Witness complied.)

19 Q. Okay. The box is marked BMC-03-A; is that  
 20 correct?

21 A. Yes, sir.

22 Q. All right. And as we open the flap, the mylar  
 23 sheet is inside and it's taped to the inside of the box;  
 24 is that what we see?

25 A. Yes, sir.

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1 would put on your car, but you don't put this on your car  
 2 because it's totally opaque. It's got a silvered side on  
 3 one side and then a black side on the other, so you can't  
 4 see through it except just a little bit of light. This  
 5 makes a nice reflective surface, so that when you shine a  
 6 low angle light across it, you're going to readily see  
 7 impressions that are on there.

8 So what you do is you put this dark side down  
 9 onto the area you suspect might have a footwear  
 10 impression, and then you charge electric -- static  
 11 electricity, several thousand volts of static electricity,  
 12 and you basically zap it by putting down an antenna on one  
 13 side and a probe from the static electricity on the other  
 14 side. Dust will preferentially lift from the surface that  
 15 you're on onto that mylar film, so you get a reverse  
 16 impression of whatever is there in the dust.

17 Q. So is that what you did on June 30th, 2010?

18 A. Yes, sir.

19 Q. Did you obtain a full or a partial footwear  
 20 impression?

21 A. Partial.

22 Q. Okay. Right there in front of you, I think, is a  
 23 box. If you would examine that and tell us what's  
 24 contained inside.

25 A. That is the mylar film on which I captured a

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1 Q. Okay. Now, is this something that you did that  
 2 day, June 30th, or sometime -- or sometime other time?

3 A. I did it there while we were processing the  
 4 scene.

5 MR. CHAMBLESS: Okay. I'm going to offer  
 6 the, I guess, the actual exhibit, the mylar impression as  
 7 334, and the box as 334-A.

8 MR. WESTFALL: No objection, Your Honor.

9 THE COURT: Admitted.

10 (State's Exhibit No. 334 admitted.)

11 (State's Exhibit No. 334-A admitted for  
 12 record purposes only.)

13 (Sotto voce discussion.)

14 Q. (BY MR. CHAMBLESS) All of the -- is it correct  
 15 that all of the exhibits that were retrieved either from  
 16 the Weatherly house or the Tundra were taken by yourself  
 17 and Officer Blansit back to the Mansfield Police  
 18 Department; is that correct?

19 A. Yes, sir.

20 Q. At a later time did you process certain of the  
 21 exhibits, specifically BMC-19 and 27, to find out if there  
 22 were any latent prints on those exhibits?

23 A. Yes, sir.

24 Q. What was the result of your work in that -- on  
 25 those two items? I guess beginning with BMC-19.

1 A. Okay.  
 2 Q. I believe this would have been on July 19th of  
 3 2010.  
 4 A. Yes, sir. I'll catch up with you here soon.  
 5 Q. Okay.  
 6 A. All right, sir.  
 7 Q. Tell us what happened when you processed BMC-19,  
 8 I believe is a CD that was found within the Tundra, and  
 9 also BMC-27, another CD that was found within the Tundra.  
 10 A. I took one latent print lift from BMC-19 and two  
 11 from BMC-27.  
 12 Q. Okay. Showing you BMC-19. Is this the item  
 13 which you processed on July 19th, 2010?  
 14 A. Yes, sir.  
 15 Q. Okay. And now I show you BMC-27, State's 333, is  
 16 this the item that you processed on July 19th, 2010 and  
 17 obtained two latent prints?  
 18 A. Yes, sir.  
 19 Q. Okay. Showing you now certain items. They're  
 20 marked as BMC-36, BMC-37-A and 37-B.  
 21 Beginning with BMC-36, would you examine this  
 22 and tell us if you recognize that item?  
 23 A. I do.  
 24 Q. What is BMC-36?  
 25 A. The latent print I lifted from the CD, BMC-19.

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1 Q. Okay. Looking on the bench in front of you, do  
 2 you see an envelope marked BMC-40?  
 3 A. Yes, sir.  
 4 Q. Would you be kind enough to open that, and I'll  
 5 ask if you recognize those items.  
 6 A. Okay. I'm going to note that this envelope is  
 7 sealed. All right, sir.  
 8 Q. Do you recognize the items contained within your  
 9 marking BMC-40?  
 10 A. I do.  
 11 Q. And what are they?  
 12 A. These are the four lifts I took from the Sylvania  
 13 television set.  
 14 Q. If you would be kind enough to place those in  
 15 here, appreciate it, the lifts.  
 16 A. Do you want the jacket also?  
 17 Q. No. I want to ask you to look over here. If you  
 18 can kind of stand up and look at this item, this  
 19 television here. It's been admitted into evidence in this  
 20 case, I'll represent that. Is this the television on  
 21 which you did the super glue processing and obtained these  
 22 four latents marked BMC-40?  
 23 A. It appears to be.  
 24 MR. CHAMBLESS: Okay. Offer the four prints  
 25 as 335, and the packaging as 335-A for record purposes.

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141  
 1 Q. Okay. Thank you. And now if you would look at  
 2 these marked BMC-37-A and B.  
 3 A. All right, sir.  
 4 Q. What are they, 37-A and 37-B?  
 5 A. These are two latent print lifts I took from the  
 6 CD in Item 27, BMC-27.  
 7 Q. All right. Thank you. Now to go back in time  
 8 to -- specifically to July 6th, 2010, did someone from the  
 9 Johnson County Sheriff's Department bring you a Sylvania  
 10 flat screen television set?  
 11 A. Yes, sir.  
 12 Q. Okay. And specifically was that Garit Bennett of  
 13 the Johnson County Sheriff's Department?  
 14 A. Yes, sir.  
 15 Q. Okay. What did you do with regard to that item?  
 16 A. We -- I fumed the surfaces with a cyanoacrylate  
 17 fuming wand. And cyanoacrylate is super glue. So I fumed  
 18 it. It's a wand that heats up the super glue, causes it  
 19 to come out as a fume, and it deposits across the  
 20 surface. If there are latent prints that are present on  
 21 the surface, then the super glue will stick to the latent  
 22 prints so that you've got a visual image of them.  
 23 Q. What was the result when you did that process to  
 24 the television?  
 25 A. I got four partial prints.

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 1 MR. WESTFALL: No objection, Your Honor.  
 2 THE COURT: Admitted.  
 3 (State's Exhibit No. 335 admitted.)  
 4 (State's Exhibit No. 335-A admitted for  
 5 record purposes only.)  
 6 Q. (BY MR. CHAMBLESS) Were you also brought by  
 7 Garit Bennett from the Sheriff's Department a certain item  
 8 which I'm going to show you marked as State's Exhibit  
 9 209? If you would take a look at this object. Do you  
 10 recognize this?  
 11 A. All right, sir.  
 12 Q. Do you recognize that particular piece?  
 13 A. It appears to be the jewelry box that was brought  
 14 to me by Garit Bennett on July 8th.  
 15 Q. July 8th?  
 16 A. 2010, yes, sir.  
 17 Q. Now, collected from the Tundra, we've identified  
 18 that you and Officer Blansit collected this item, your  
 19 marking of BMC-07, State's Exhibit 318. Let me show you  
 20 that.  
 21 A. Yes, sir, I collected this.  
 22 Q. All right. Now, on that date, July 8th, did you  
 23 examine these two items and whether -- and what were your  
 24 observations about them, if anything?  
 25 A. First off, I tried to develop latent prints and

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1 was unsuccessful. I used the same fuming wand as I had  
 2 used before. And I then just did a physical comparison of  
 3 the drawer, State's Exhibit 318, with the cabinet, which  
 4 is what?

5 Q. Maybe it would be helpful to open this up here.  
 6 Tell you what, let's just take that out.

7 A. The cabinet is State's 209.

8 Q. Okay. If you would, tell us what your  
 9 observations were, first about this item, and then the  
 10 drawer that you had obtained from the Tundra.

11 A. I noticed there were four empty slots, four  
 12 drawers in State's 209. And the drawer in State's 318  
 13 just fit into those slots. And also the construction of  
 14 318 and the drawer still found in 209 were the same, same  
 15 lining, same finish, same handles, everything.

16 Q. Okay.

17 A. So indistinguishable from the drawer that's in  
 18 the cabinet.

19 Q. Now, I'll represent that the jewelry box was  
 20 found in a Dodge Stratus and the drawer was found in a  
 21 Tundra. Of course, that's the item you recovered from the  
 22 Tundra; is that correct?

23 A. Yes, sir, that's correct.

24 Q. On a certain date were you provided what you have  
 25 marked, I believe, as BMC-31? I'll show you what's been

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1 as State's Exhibit No. 336, the packaging as 336-A.

2 MR. WESTFALL: No objection, Your Honor.

3 THE COURT: Admitted.

4 (State's Exhibit No. 336 admitted.)

5 (State's Exhibit No. 336-A admitted for  
 6 record purposes only.)

7 Q. (BY MR. CHAMBLESS) I want to ask you, on July  
 8 19th of 2010, did you evaluate certain of the items that  
 9 were collected for possible fingerprint impressions?

10 A. Yes, sir.

11 Q. Did you examine BRB-05, the hammer?

12 A. I did.

13 Q. And what was the result?

14 A. No prints.

15 Q. Okay. BRB-06, a plastic bag, I think with pills  
 16 inside, did you examine that?

17 A. I did.

18 Q. And what was the result?

19 A. No prints.

20 Q. BRB-07, did you do the same for that?

21 A. I did.

22 Q. The result?

23 A. No prints.

24 Q. BRB-09, a plastic bag with pills, did you examine  
 25 that?

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145 1 admitted as State's Exhibit 211. Would you take a look at  
 2 these.

3 A. All right, sir.

4 Q. Do you recognize what had been in the packaging  
 5 GB-31?

6 A. I do.

7 Q. And what is that?

8 A. State's 211 is a pair of Nike athletic shoes that  
 9 were submitted to me on Tuesday, July 13th, 2010, by  
 10 Garit Bennett.

11 Q. Okay. Now, on the bench to your left there is an  
 12 item marked BMC-39. Would you be kind enough to open  
 13 that, and tell us if you recognize that item.

14 A. Yes, sir.

15 Q. What is BMC-39?

16 A. This is known test impressions I made with  
 17 a device called an Identicator, which are known shoe  
 18 print impressions from that pair of shoes I just looked  
 19 at. I think it may be 207, but I wouldn't swear to it.

20 Q. All right. Could you remove that from the  
 21 packaging.

22 A. (Witness complied.)

23 Q. On what date did you develop this impression?

24 A. On July 13th.

25 MR. CHAMBLESS: Okay. Offer the impression

1 A. I did.

2 Q. And the result?

3 A. No prints.

4 Q. BMC-23, a lighter, what -- did you examine that?

5 A. I did.

6 Q. And what were the results?

7 A. No prints.

8 Q. BMC-24, a lottery ticket, did you examine that?

9 A. Yes, sir.

10 Q. And what was the result on that date?

11 A. No prints.

12 Q. BMC-25, a door opener, did you examine that item?

13 A. I did.

14 Q. And what was the results?

15 A. No prints.

16 Q. BMC-04, four DVDs, did you examine that item?

17 A. Yes, sir.

18 Q. And what was the result?

19 A. 4, there were no prints.

20 Q. And BMC-06, a Marlboro Light cigarette package,  
 21 did you examine that?

22 A. Yes, sir.

23 Q. And what was the result?

24 A. No prints.

25 Q. Mr. Courtney, we live in a CSI world here, and

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1 this seems puzzling. Is it surprising to you?  
 2 A. No, sir. That we didn't get prints on any of  
 3 those?

4 Q. That's right.

5 A. Not at all.

6 Q. I mean, I thought you could just look at  
 7 something and see a print. I mean, it seems like that.

8 A. One might think that from watching television.  
 9 It's not -- not my world.

10 Q. Okay. Did you release all of the items collected  
 11 from the house and from the Tundra to Garit Bennett on  
 12 July 20th, 2010?

13 A. Yes, sir.

14 Q. Okay. With the exception of the four latent  
 15 prints from the television, and you released that to  
 16 Garit Bennett, I believe, on October 18th of 2011; is that  
 17 correct?

18 A. Yes, sir.

19 Q. Now, some questions that we have talked about  
 20 earlier, is there -- when you think about DNA, is it  
 21 possible to date when the DNA was placed on an item?

22 A. No, sir.

23 Q. Not possible?

24 A. No, sir.

25 Q. It could be put here just five seconds ago, five

1 gloves when they're in a crime scene because it has been  
 2 on television a lot. But also just we don't get clean  
 3 touches on good surfaces. We have smudges. They don't  
 4 make good contact with it. Sometimes they wipe their  
 5 prints down. It's not ever really possible to know why we  
 6 didn't get prints.

7 Q. Okay. One final thing, the class -- what is the  
 8 difference between class and individual characteristics on  
 9 a shoe impression?

10 A. Class characteristics are those traits that are  
 11 built into the shoe by the manufacturer. The shoes we  
 12 looked at there that I last identified by number have a  
 13 bunch of squiggly lines on them. Those squiggly lines are  
 14 X millimeters apart and the angles bend at a certain  
 15 angle. That's because the manufacturer chose to make it  
 16 that way. Okay.

17 And then individual characteristics are going  
 18 to be imperfections in the manufacture process and, more  
 19 generally, going to be the defects that happen, like you  
 20 step on a piece of glass and put a cut in the out sole.  
 21 These are actually going to show up. Those are individual  
 22 characteristics, which are random and can be used to  
 23 identify a particular shoe.

24 Q. Do you have an opinion as to the class  
 25 characteristics of the shoes from GB-31? Show you which

1 years ago; no way to tell?

2 A. Right.

3 Q. Okay. Fingerprints, same question?

4 A. Same answer.

5 Q. Same answer?

6 A. Same answer.

7 Q. In other words, you cannot date, there's no time  
 8 stamp with fingerprint impressions?

9 A. Time is a factor to some extent, but for the most  
 10 part, it's going to be all these other things, the  
 11 environment, how many people are touching it, how hot it  
 12 is, how dry it is, the medium that it's placed on, the  
 13 medium that it's placed in. All those things go in to  
 14 that, so that five years from now you could have a perfect  
 15 latent print. In fact, if it's on paper, you might get a  
 16 print after 50 years, and then you might not get one 5  
 17 minutes after the person touched it.

18 Q. It seems like it's almost rare or unusual to  
 19 actually develop a latent print from a crime scene?

20 A. Well, it's not nearly as usual as I would like  
 21 for it to be. We have a lot of cases where we do not get  
 22 prints.

23 Q. What are some of the factors that contribute to  
 24 that?

25 A. Well, one of the factors now is that people wear

1 ones. These shoes, the class characteristic of this item,  
 2 State's Exhibit 211, and the class characteristics on the  
 3 mylar impression you obtained from the newspaper at the  
 4 Weatherly house, do you have an opinion about that?

5 A. I have to say, first off, to qualify this  
 6 opinion, that this was a very cursory examination I did.  
 7 I did not do it with the thought that I was going to  
 8 actually do a full comparison. Based on a limited  
 9 observation, I did not see anything that would cause me to  
 10 conclude that those shoes did not make that print.

11 Q. But is that something that would have to, I  
 12 guess, undergo further evaluation if someone were to  
 13 testify as to that?

14 A. Correct.

15 MR. CHAMBLESS: All right. Thank you,  
 16 Mr. Courtney.

17 Pass the witness.

18 THE WITNESS: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. WESTFALL:

21 Q. Hi, Max.

22 A. Hi.

23 Q. Tell me more about the shoe impression. You've  
 24 been doing it for quite a while, haven't you?

25 A. I have.

1 Q. Sir, just tell us generally what the -- what  
2 the -- I guess the theory is.

3 A. Well, a person, let's say in this case, steps  
4 onto a piece of newspaper with dust on their shoe. They  
5 leave an impression here, which is going to be the  
6 impression -- if my right hand were a shoe, my left hand  
7 would be the impression that it leaves. They'll be mirror  
8 images of each other in dust on the surface. Okay.

9 The class characteristics, the chevrons --  
10 they're really not squiggly lines, they're really  
11 chevrons. The chevrons on there have their own shape and  
12 size, so that's going to get transferred onto there. So  
13 we look at the shoe or test impressions from the shoe  
14 ideally, as I made in the other one where I put the  
15 impressions on the paper. So I look at the test  
16 impressions here versus the impression I see on the -- oh,  
17 okay, yeah.

18 Q. Do you need a laser pointer? Do you have one?

19 A. I don't have one with me, no, sir.

20 Q. Would it help you to have one?

21 A. Sure.

22 Q. All right. So tell us about the class  
23 characteristic.

24 A. Okay. Here we have these chevrons or zigzag  
25 lines, and the distance between those is a class

1 Q. Okay. Tell the Jury what you have found there.

2 A. Is that as sharp as the focus will go at this  
3 point?

4 Q. Yeah, I know, I'm trying to. Right there.

5 A. All right. Right here is a -- that chevron has  
6 been broken off, probably in wear. Exact placement of  
7 where that broke is random. Okay. So if you did it 50  
8 times and you damaged one of those chevrons, it wouldn't  
9 be the same place on that shoe. So we start getting now  
10 individual characteristics which will tend to, if you've  
11 got a sufficient number of them, will tend to identify  
12 that as the shoe that made the impression.

13 Q. I would suspect that both of them could be  
14 evidence, class characteristics and individual  
15 characteristics?

16 A. Both of them could be evidence. One of them  
17 could be proof.

18 Q. Okay. And it would be like the funnel?

19 A. The funnel?

20 Q. The -- I guess so many, so much of different  
21 forensic evidence is kind of like that. You've got the  
22 gunshot residue that one of them is one way, one of them,  
23 I guess, evidence and proof or --

24 A. Right.

25 Q. I mean, you would see class characteristics being

1 characteristic. The angle at which they turn is a class  
2 characteristic. The width of the shoe at this point is a  
3 class characteristic, and here, and here. The length is a  
4 class characteristic. The placement of the logo there,  
5 the size of it is also a class characteristic. So all of  
6 these are there by manufacturer's design. And you're  
7 going to see those in the surface, if the surface -- if  
8 the impression is distinct enough, you're going to see  
9 some or all of these class characteristics there.

10 Q. I guess, as you say, it would be a mirror image  
11 once you lifted it up?

12 A. Right. Yes, sir.

13 Q. Now, look back here on the heel. That sort of  
14 would indicate the way a person walks, I guess, right?

15 A. Yes, sir.

16 Q. Would that be what you would call an individual  
17 characteristic?

18 A. Actually, no. It would be what I would call a  
19 wear characteristic. It's not good enough for  
20 identification of a shoe.

21 Q. Okay. Can you see anything in here that you  
22 might consider a individual characteristic?

23 A. Yes, sir, right here.

24 Q. Oh, okay. Let me go put that on the overhead.

25 A. All right, sir.

1 testified about in court?

2 A. Sure --

3 Q. -- if somebody found a footprint --

4 A. As long as they -- I'm sorry.

5 Q. Well, if someone found a footprint at a scene  
6 that had the class characteristics as the same shoes the  
7 defendant was wearing, you would expect to see that  
8 testified to in court?

9 A. As long as they limited their testimony to not  
10 saying that this is the shoe, yes.

11 Q. Okay. This is -- it was a footprint made by the  
12 same type of shoe or shoe with the same class  
13 characteristics?

14 A. Right.

15 Q. Now, this is from State's Exhibit 336. This is  
16 one of the footwear impressions, I guess, prints that you  
17 made, right?

18 A. Right.

19 Q. You used that for the comparison?

20 A. Yes, sir.

21 Q. So how long does it take for you to look at it  
22 and decide that it matches the class characteristics?

23 A. Um, I've identified -- oh, class  
24 characteristics?

25 Q. Right.

1 A. Well, at the level I did it, it didn't take very  
 2 long. If I were going to do a written report or testify  
 3 in court, expect to testify in court as to the  
 4 significance of it, I would probably spend several hours  
 5 at least looking. Because sometimes you look at it and  
 6 you say, oh, yeah, this looks the same. And then you see,  
 7 oh, no, it zigged when it should have zagged. So you've  
 8 got to be really careful about that.

9 Q. Would you be qualified to testify about the  
 10 individual characteristics and shoe print impressions?

11 A. I've testified to it before, yes, sir.

12 Q. Were you asked to do any analysis like that in  
 13 this case?

14 A. I was not.

15 Q. Now I'm going to go ahead and show these to you  
 16 because it's almost impossible to see. That mylar is hard  
 17 to see.

18 Is this, Defendant's 16, is that a picture of  
 19 the mylar where you can kind of see the footprint?

20 A. You can kind of see it. Yeah, you can see it  
 21 very well there.

22 Q. But this is the same thing? I guess, it's got  
 23 that little white dot?

24 A. Yes, sir.

25 Q. Let me put this one on the overhead. This is

157 1 Defendant's 15 that I... And this is off of that mylar  
 2 sheet that was the electrostatic print off the newspaper?

3 A. Yes, sir.

4 Q. Do you -- do you remember which way this print  
 5 was facing? Could you tell from this print whether they  
 6 were walking down the hall, walking back from the hall?

7 A. They were walking back from the hall.

8 Q. Okay.

9 A. This is the -- basically the toe box of the  
 10 shoe. And it's -- they stepped onto the paper, so it's on  
 11 the edge of the paper is the way I remember it.

12 Q. This would have been somebody coming -- coming  
 13 back from those back bedrooms?

14 A. I believe so, yes, sir.

15 Q. And this --

16 A. Can I have just a second to review this, make  
 17 sure I'm not misspeaking? Okay. Well, I guess I didn't  
 18 state it. I believe that it's correct that the person was  
 19 leaving the bedroom area.

20 Q. Okay. And just from the Max Courtney eyeballing  
 21 it, you know, I'm not going to ask you to spend several  
 22 hours, but this footprint on the newspaper coming back  
 23 from the bedroom area has the same class characteristics  
 24 as GB-31, those black Nike shoes?

25 A. By my cursory examination, yes, sir, it does.

1 Q. Which would be -- if we assume that this is --  
 2 Jose Ramos is the person those shoes came from, these  
 3 would be those black Nike shoes, the same ones that are in  
 4 the bag over there?

5 A. Yes, sir.

6 Q. Now, it's got a BMC number, but it might have  
 7 been Officer Blansit that got the footwear impression off  
 8 the step side of the Tundra, the driver side?

9 A. It was Officer Blansit that -- it was  
 10 photographed only. He was the one that found it and the  
 11 one that took the photographs of it, I believe.

12 Q. And that, I think, is this one, BMC-20, which is  
 13 pictured in Defendant's 17?

14 A. Yes, sir.

15 Q. I don't know if we can -- ah, there was a  
 16 footwear impression there as well, right?

17 A. Yes, sir.

18 Q. And y'all preserved it?

19 A. Photographically.

20 Q. And did you do something else? Didn't you lay  
 21 down a film on it or something and --

22 A. I don't think we got anything if we did. Hold  
 23 on.

24 Q. I'm finding a passenger side impression lift.  
 25 There may not have been one on the driver side, but that's

159 1 what I was thinking of.

2 A. The passenger side.

3 Q. Yeah, do you have one that -- you did one on the  
 4 passenger side but not the driver?

5 A. What's the number on that one?

6 Q. B -- well, BMC-21.

7 A. 21. Okay. Yes, sir, footwear impression lift  
 8 from driver side exterior step rail, BMC-20.

9 Q. 20. Okay. It's in here somewhere. Here it is.

10 A. Okay.

11 Q. It's really not any easier to see than the  
 12 picture. So, once again, looking at it, would you say  
 13 that this has the same class characteristics as those  
 14 black Nike shoes?

15 A. At first look, yes, it does.

16 Q. This is a little bit closer of it. Does that  
 17 appear to have the same class characteristics as the Nike  
 18 shoes?

19 A. Yes, sir.

20 Q. Now I want to show you photograph -- several  
 21 photographs from a different scene, but these are in  
 22 evidence.

23 A. Okay.

24 Q. These are from an incident that occurred before  
 25 Nancy Weatherly.

1 A. Okay.  
 2 Q. You probably recognize these. Do you recognize  
 3 all those people? Well, maybe not the patrol officers,  
 4 but you recognize Boetcher, right?  
 5 A. Um, I -- yeah. I don't know him well. I've seen  
 6 him and dealt with him before.  
 7 Q. Well, over here, you see the white thing on that  
 8 fence?  
 9 A. I do.  
 10 Q. And here's the white thing on the fence again.  
 11 A. Okay.  
 12 Q. And what we're circling around to --  
 13 A. Hum.  
 14 Q. -- there's another footprint.  
 15 A. Okay.  
 16 Q. And would you say, just looking at it the way you  
 17 do and the way you can, does that appear also to be the  
 18 same class characteristics as those black Nikes?  
 19 A. Certainly a possibility.  
 20 Q. There's a bit closer in.  
 21 A. Yes, sir.  
 22 Q. And that's from the scene of Ruben Martinez, a  
 23 man who was shot at the Texaco station before.  
 24 A. All right, sir.  
 25 MR. WESTFALL: May I have Mr. Courtney step

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1 REDIRECT EXAMINATION  
 2 BY MR. CHAMBLESS:  
 3 Q. Mr. Courtney, let's suppose on the one hand, just  
 4 hypothetically, we had a written and verbal statement that  
 5 said, "On the morning that I shot Ruben Martinez", I being  
 6 Mark Soliz, "Jose Ramos was with me". We had this written  
 7 or verbal statement.  
 8 A. Okay, sir.  
 9 Q. On the other hand, you were shown these  
 10 photographs here, and let's just assume those class  
 11 characteristics are similar to Jose Ramos' shoes, right?  
 12 A. Okay.  
 13 Q. Let's assume even further that those are, in  
 14 fact, the shoe impressions of Jose Ramos.  
 15 A. All right.  
 16 Q. If Jose Ramos' shoe prints were there in the mud  
 17 on the way out from the Ruben Martinez capital murder,  
 18 would that lend support to the statement of Mark Soliz  
 19 saying they were there together?  
 20 A. Um, sure.  
 21 Q. Okay. And let's suppose also that you had the  
 22 same statement from Mark Soliz, a written and verbal  
 23 statement said, "I was with Jose Ramos. He was with me.  
 24 I had the gun, but we went in together, and we were in the  
 25 house and we stole from the house of Nancy Weatherly."

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1 down, Your Honor?  
 2 THE COURT: Yes.  
 3 MR. WESTFALL: Thank you, Max.  
 4 THE WITNESS: Yes, sir.  
 5 Q. (BY MR. WESTFALL) You stand here. Now I'm  
 6 going to show you what's already in evidence as State's  
 7 Exhibit 17, State's Exhibit 12, and State's Exhibit  
 8 13. And these -- I'll represent to you, this is in  
 9 evidence.  
 10 A. Okay.  
 11 Q. -- are on a door that got kicked in at the home  
 12 of Vince Circelli.  
 13 A. All right, sir.  
 14 Q. It was a burglary.  
 15 A. Okay.  
 16 Q. And would you say that these footprints on this  
 17 door, are they also consistent with the class  
 18 characteristics of those black Nike shoes?  
 19 A. As far as I can tell, first examination, yes,  
 20 sir.  
 21 MR. WESTFALL: Thank you.  
 22 THE WITNESS: All right, sir.  
 23 MR. WESTFALL: Your Honor, I'll pass the  
 24 witness.  
 25 Thank you, Max.

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1 If the shoe impression on BRB-03, if indeed  
 2 that were the shoe impression of Jose Ramos, would that  
 3 corroborate and support what Mark Soliz said was the case,  
 4 that he and Jose Ramos were in the house committing that  
 5 offense?  
 6 A. Yes, sir.  
 7 Q. Okay. Which is more significant evidence-wise,  
 8 is it the class characteristic of a shoe or a fingerprint  
 9 of an individual?  
 10 A. Class characteristic of a shoe? Well, a  
 11 fingerprint would be. Fingerprint identification would be  
 12 more absolute than just using class characteristics of a  
 13 shoe.  
 14 MR. CHAMBLESS: Thank you, Mr. Courtney.  
 15 RECROSS-EXAMINATION  
 16 BY MR. WESTFALL:  
 17 Q. Were you ever asked to compare the fingerprints  
 18 from -- or these shoe impressions from the several  
 19 different scenes?  
 20 A. I'm just now aware of their existence.  
 21 Q. And do you have any -- oh, okay, you're just  
 22 aware of the existence. And you have no idea if anyone  
 23 was ever asked to actually do these?  
 24 A. I don't know.  
 25 Q. And I guess if the comparisons never get done,

1 then we never know if they have evidentiary value or not,  
 2 do we?  
 3 A. Right.  
 4 Q. There's certainly -- and we've heard many times  
 5 while we've been here that there could be a hundred  
 6 surfaces that we test for fingerprints, but on the hundred  
 7 and first, we may find a fingerprint?  
 8 A. True.  
 9 Q. And it's not the -- the fact that it is  
 10 relatively rare makes the time that we find one  
 11 significant?  
 12 A. Sure.  
 13 Q. And you found several fingerprints?  
 14 A. We did.  
 15 Q. You developed fingerprints on the -- on the CD  
 16 that was in the CD player of the truck?  
 17 A. Yes, sir.  
 18 Q. And you sent those to be examined?  
 19 A. Yes, sir.  
 20 Q. And you swabbed the straw that was in the  
 21 Dixie -- or in the D.Q. cup in the back seat?  
 22 A. Swabbed the what?  
 23 Q. The straw.  
 24 A. Oh, I submitted the straw actually.  
 25 Q. Submitted. Who did you submit it to?

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1 A. Well, I sent it back to the Johnson County  
 2 Sheriff's Office through Deputy Bennett to take to a lab  
 3 to do DNA.  
 4 Q. To do DNA, contact DNA on the --  
 5 A. Yes, sir.  
 6 Q. And then, okay, so BMC-37 is where you developed  
 7 the prints that was on the CD that was in the CD player?  
 8 A. Yes, sir.  
 9 Q. And then BMC-39, tell us what that was.  
 10 A. That's the prints from the television.  
 11 Q. Okay.  
 12 A. Well, hold on. 39 are the known out sole  
 13 impressions from the shoes.  
 14 Q. That's why I made a mental note of it.  
 15 A. That's why I looked.  
 16 Q. And then the -- the oil stain on the passenger  
 17 side of the truck, why did you do a swab of that?  
 18 A. Thought it could have DNA in it.  
 19 Q. Why did you think that?  
 20 A. Well, it was as if someone had leaned their head  
 21 against it like with oily hair. It's what it reminded me  
 22 of when I saw it.  
 23 Q. Okay. And, yeah, if you get a full-on DNA match,  
 24 that is pretty powerful proof that somebody was there?  
 25 A. Yes, sir.

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1 Q. And there were several things that you did send  
 2 to the crime lab. Like, for instance, the BMC-37, you  
 3 sent that to be examined?  
 4 A. Yes, sir.  
 5 Q. Those are the fingerprints that were on that CD?  
 6 A. Right.  
 7 Q. The dust print, the footprint, you sent that  
 8 stuff to be examined as well, and somebody else kind of  
 9 did that analysis. Do you have any idea if they analyzed  
 10 those other -- these other prints as well?  
 11 A. I don't know if they did or not.  
 12 Q. That wouldn't have been a bad thing to do, would  
 13 it?  
 14 A. No, it wouldn't have.  
 15 Q. There's not -- you don't have any control over  
 16 what gets tested and what doesn't, right?  
 17 A. Well, I think I have recommendation authority. I  
 18 think everything that I asked to be done on this case was  
 19 done.  
 20 Q. Did you ask them to test that oily spot?  
 21 A. That what?  
 22 Q. BMC-26, the oily spot on the window.  
 23 A. Yes.  
 24 Q. You asked them to test that?  
 25 A. I mentioned it, yes.

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1 Q. Okay. You wanted them to test it?  
 2 A. Yes, sir.  
 3 Q. So, um, there's individual characteristics,  
 4 there's class characteristics, but somebody has to do the  
 5 analysis to see if we have any of that?  
 6 A. Yes, sir.  
 7 Q. And short of that, what we've got is you in court  
 8 looking at it, eyeballing it and saying, you know what, it  
 9 looks similar?  
 10 A. Yes, sir.  
 11 MR. WESTFALL: Okay. Thank you.  
 12 THE WITNESS: Yes, sir.  
 13 MR. CHAMBLESS: No further questions. Thank  
 14 you, Mr. Courtney.  
 15 THE COURT: May this witness be excused?  
 16 MR. CHAMBLESS: Yes, sir.  
 17 MR. WESTFALL: Yes, Your Honor.  
 18 THE WITNESS: Thank you, sir.  
 19 (Witness excused.)  
 20 MS. JACK: We call Sundaye Lopez.  
 21 (Pause in proceeding.)  
 22 THE COURT: Please raise your right hand.  
 23 (Witness sworn.)  
 24 THE COURT: Go ahead and have a seat.  
 25 MS. JACK: May I proceed, Your Honor?

1 THE COURT: Yes, ma'am.  
 2 SUNDAYE LOPEZ,  
 3 Having been first duly sworn, testified as follows:  
 4 DIRECT EXAMINATION  
 5 BY MS. JACK:  
 6 Q. Would you please introduce yourself to the ladies  
 7 and gentlemen of the Jury.  
 8 A. Yes. My name is Sundaye Lopez, and I work for  
 9 the Fort Worth Police Crime Laboratory.  
 10 Q. Would you tell the members of the Jury about the  
 11 Fort Worth Police Department Crime Laboratory.  
 12 A. Our lab is part of the Fort Worth Police  
 13 Department. We consist of four different units. We have  
 14 a Latent Print Unit, a Firearms Unit, a Drug Chemistry  
 15 Unit, and the Evidence Screening DNA Unit, which is what  
 16 I'm a part of.  
 17 Q. Now, are all these units centralized in one large  
 18 building?  
 19 A. Yes, they are.  
 20 Q. And is there also a Property Control Area of that  
 21 building as well?  
 22 A. Yes. There's another unit within our -- within  
 23 our building called the Property Control Area, and we  
 24 receive our evidence from that area and take it to our  
 25 Crime Lab.

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 1 Q. Okay. Let me -- to give the Jury an idea, how  
 2 large a building are we talking about?  
 3 A. Oh, I don't know. It's a big -- we consider it a  
 4 campus, so it's a large area.  
 5 Q. And in many ways is it often referred to as  
 6 somewhat of a complex?  
 7 A. Yes, it is.  
 8 Q. But it's all centrally located under one large  
 9 building, under one large roof?  
 10 A. That's correct.  
 11 Q. If we're going to follow a piece of evidence,  
 12 when a police officer collects a piece of evidence, a  
 13 Crime Scene officer, for instance, is it initially taken  
 14 at times to the Crime Scene office?  
 15 A. Yes.  
 16 Q. And is that Crime Scene office in the same  
 17 building or is it in the Fort Worth Police Department in a  
 18 different location?  
 19 A. The Crime Scene office is located in Fort Worth  
 20 Police Headquarters, and the Property is on a different  
 21 location.  
 22 Q. All right. So once the Crime Scene officer  
 23 processes whatever piece of evidence, allows it to dry,  
 24 does whatever they need to do, what do they do with the  
 25 evidence from there?

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 1 A. Once it's packaged up, they'll drive it over to  
 2 the Lancaster office and place it in the Fort Worth Police  
 3 Property Room.  
 4 Q. You said once it's packaged up. Is every piece  
 5 of evidence packaged?  
 6 A. Yes, it is.  
 7 Q. Why is that?  
 8 A. It helps to maintain the integrity of the  
 9 evidence. If a package is sealed, it has tape on it, an  
 10 initial, a date, and that way you can track a chain of  
 11 custody. You know that the evidence has been protected  
 12 from any type of tampering or contamination.  
 13 Q. Okay. Now, when the evidence is brought to  
 14 this large complex and is checked into the Property  
 15 Control Area, is that an area that's open to the general  
 16 public?  
 17 A. No, it's not. It's -- we have security tags that  
 18 allow us in there, so it's a -- it's a secure, limited  
 19 access area.  
 20 Q. All right. And are there employees that are  
 21 specifically assigned just to that Property Control Area?  
 22 A. Yes, there are.  
 23 Q. All right. Now, you're an employee of the Fort  
 24 Worth Crime Lab, are you not?  
 25 A. Right.

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 1 Q. Do you have access to that area?  
 2 A. No, I don't.  
 3 Q. Okay. Do police officers have access to that  
 4 area?  
 5 A. No, they do not.  
 6 Q. Do Prosecutors have access to that area?  
 7 A. No.  
 8 Q. Okay. So certainly the general public has no  
 9 access to this area?  
 10 A. Right.  
 11 Q. Is the Property Control Area a secure area?  
 12 A. Yes, it is.  
 13 Q. When there are pieces of evidence that come in  
 14 that are connected to a particular case, are they in one  
 15 particular container?  
 16 A. They're usually grouped together by a service  
 17 number.  
 18 Q. Okay. And is there some overlap when we have a  
 19 particular suspect commit several crimes?  
 20 A. Yes.  
 21 Q. Okay. For instance, in this case, when we have a  
 22 stream of crimes over seven days, sometimes evidence is  
 23 stored in multiple -- well, sometimes evidence is in  
 24 different sections; is that correct?  
 25 A. That is correct.

171

1 Q. Okay. So when you want to take a piece of  
 2 evidence out to look at it, how do you go about checking  
 3 it out?

4 A. Each submission of evidence by a Crime Scene  
 5 officer or an officer is given a tag number, a unique tag  
 6 number. So if I want a piece of evidence off of a certain  
 7 tag number that was submitted by an officer, I let one of  
 8 the Property Control people know that that's the piece of  
 9 evidence I want. And I go to a window, and they go pick  
 10 it up for me and bring it to the window.

11 Q. So you don't even get to go retrieve it?

12 A. No, I don't.

13 Q. Now, you mentioned and you told the Jury that  
 14 you're a forensic scientist. Can you tell the Jury what  
 15 that means?

16 A. I work in the biology area, so I screen items of  
 17 evidence for the presence of body fluids. I try to  
 18 identify and characterize those fluids, and then I collect  
 19 them and send them for DNA testing if it's needed.

20 Q. Can you tell the Jury your educational background  
 21 that qualifies you to do this.

22 A. Yes. I received my degree in biology from Texas  
 23 A & M University. After graduation, I completed an  
 24 on-the-job training program at the Crime Lab. And since  
 25 then, I have many hours of continuing education in DNA

1 DNA Analysts and Administrators.

2 Q. Can you tell the Jury what your professional  
 3 background entails?

4 A. I've been doing this job for about 11 years now.  
 5 I have testified in Tarrant County multiple times. This  
 6 is my first time in Johnson County.

7 I assist the detectives if they have  
 8 questions on DNA testing. I assist Prosecutors if they  
 9 have any questions.

10 Q. Okay. And you said that you testified several  
 11 times in Tarrant County. Have you testified as an expert  
 12 specifically in the area of biology or evidence screening?

13 A. Yes, I have, many times.

14 Q. And can you tell the members of the Jury what  
 15 serology means?

16 A. Serology is basically looking at an item of  
 17 evidence and trying to find a biological fluid on it.  
 18 We'll test a fluid or a stain to see if we can identify  
 19 what that stain may be and if it may be of a biological  
 20 use in DNA testing.

21 Q. Okay. And is that a part of evidence screening  
 22 or how would you explain what it means to "screen" a  
 23 particular piece of evidence?

24 A. To screen a piece of evidence, we look at  
 25 something with our -- with a naked eye, see if we see any

173 1 testing, evidence screening, biological collection,  
 2 packaging, so on, from University of North Texas Health  
 3 Science Center and Cedar Crest College, West Virginia  
 4 University and --

5 THE REPORTER: I'm sorry?

6 A. Orchid Cellmark in Dallas.

7 Q. What is Orchid Cellmark?

8 A. It's a private DNA testing company.

9 Q. All right. And have you attended several  
 10 seminars in this particular area?

11 A. Yes.

12 Q. All right. Can you give the Jury an idea of the  
 13 types of seminars you've attended?

14 A. I've gone to seminars put on by the Association  
 15 of Forensic DNA Analysts and Administrators, and that's a  
 16 group of DNA analysts from around Texas and we'll get  
 17 together and discuss the latest technologies, the trends  
 18 in forensic science, special cases. I go to DNA training  
 19 across the country put on by the Promega Corporation, and  
 20 basically we get together and learn the best possible ways  
 21 to collect evidence, discuss our experiences and how  
 22 testing changes over a period of time.

23 Q. Okay. Can you tell the members of the Jury about  
 24 what memberships you hold?

25 A. Yes. I'm a member of the Association of Forensic

1 blatant stains. Sometimes we'll use alternate light --  
 2 excuse me -- an alternate light source to better view a  
 3 stain.

4 Once we find something that is worthy of  
 5 testing, we'll take a small sample of it using a cotton  
 6 swab, swab our sample. And then we'll perform our testing  
 7 on this swab, not actually on our piece of evidence, and  
 8 see if we can identify what that may be.

9 Q. Okay. Now, when you're in the process of  
 10 under -- of conducting your test, are there certain  
 11 quality measures or quality precautions that you take?

12 A. Yes. We're very mindful of our evidence and  
 13 the integrity of our evidence. Anytime we're in a  
 14 laboratory, we have to wear a lab coat, gloves, a mask  
 15 to cover our mouth, just so that we -- to protect  
 16 ourselves from the evidence and also the evidence from  
 17 ourselves.

18 Q. All right. When you check a piece of evidence  
 19 out, and you're working on it in the lab, how many  
 20 different cases are you working on in any given  
 21 time?

22 A. We have one piece of evidence open at any time,  
 23 at a time. We will not have two pieces of evidence open  
 24 at the same time.

25 Q. Okay. So you're not going to have multiple

1 pieces of evidence from multiple cases open and out on  
 2 your workspace; is that --  
 3 A. No --  
 4 Q. -- correct?  
 5 A. -- absolutely not.  
 6 Q. Okay. All right. Now, were you asked to review  
 7 a series of pieces of evidence in connection with Mark  
 8 Anthony Soliz and Jose Clemente Ramos?  
 9 A. Yes, I was.  
 10 Q. Okay. And let's begin first with --  
 11 MS. JACK: May I approach this witness, Your  
 12 Honor?  
 13 THE COURT: Yes, you may.  
 14 Q. Okay. Ms. Lopez, let's begin first with what has  
 15 already been admitted into evidence as State's Exhibit  
 16 29. And it came to the court sealed in State's Exhibit  
 17 29-A. Do you recognize State's Exhibit 29-A?  
 18 A. Yes, I do.  
 19 Q. How do you recognize that?  
 20 A. I see my lab number and my initials --  
 21 Q. Okay.  
 22 A. -- on the box.  
 23 Q. And what was your lab number in connection with  
 24 these items?  
 25 A. Our lab number was FW10-04242.

176 1 like that.  
 2 And on this one, I collected swabs from --  
 3 for contact DNA from the trigger area, excuse me, and also  
 4 from the grips.  
 5 Q. All right. How many swabs did you collect from  
 6 the trigger area?  
 7 A. I collected two swabs from the trigger area.  
 8 Q. And can you show the members of the Jury where  
 9 those swabs were collected on State's Exhibit 29.  
 10 A. That would be this area right in here.  
 11 Q. Okay. And how many swabs did you collect from  
 12 the grip area?  
 13 A. I also collected two swabs from the grip area.  
 14 Q. Can you show the members of the Jury where you  
 15 attempted to collect contact DNA.  
 16 A. On the sides where you have the textured, rough  
 17 area.  
 18 Q. All right. Can you show the Jury? I'm going to  
 19 hold it.  
 20 A. It's these sides right here and the back.  
 21 Q. The sides and the back?  
 22 A. Yes.  
 23 Q. All right. And did you also collect a swab from  
 24 the magazine which has been admitted into evidence as  
 25 State's Exhibit 75-A?

177 1 Q. And does it also bear your initials after that  
 2 lab number?  
 3 A. Yes, it does.  
 4 Q. All right. And State's Exhibit 29, was what item  
 5 of evidence to you?  
 6 A. This was a Hi-Point pistol.  
 7 Q. Okay. And was it Item 8443-03?  
 8 A. Let me refer to my notes real fast.  
 9 Q. Would that jog your memory?  
 10 A. Yes.  
 11 Q. Okay.  
 12 A. Could you repeat that number, please?  
 13 Q. Sure. Lab No. 10-04242, Offense No. 66785, Tag  
 14 8443, Item 03?  
 15 A. That's correct.  
 16 Q. All right. And is that the 9 millimeter Hi-Point  
 17 pistol which is now admitted into evidence as State's  
 18 Exhibit 29?  
 19 A. Yes, it is.  
 20 Q. All right. And can you tell the members of the  
 21 Jury what evidence you collected from State's Exhibit 29?  
 22 A. From this item I attempted to collect contact  
 23 DNA, so I would look at the item and attempt to collect  
 24 contact DNA from areas where there's going to be a lot of  
 25 friction. So you would go for the grip, trigger, areas

179 1 A. Yes, I did.  
 2 Q. And how many swabs did you take from the  
 3 magazine?  
 4 A. I collected one swab from the magazine.  
 5 Q. Can you tell the members of the Jury the location  
 6 of the swab?  
 7 A. Yes. I took it from the --  
 8 MS. JACK: If you can stand up and show the  
 9 Jury, if that's all right with Your Honor.  
 10 THE COURT: Yes, ma'am.  
 11 A. I collected it from the back edge and the  
 12 crevices.  
 13 Q. So when you say the "back edge," where my finger  
 14 is right there?  
 15 A. Yes.  
 16 Q. And the crevice?  
 17 A. Yes. And those would be areas of contact.  
 18 Q. All right. And did you also collect a swab from  
 19 one of the live rounds that was -- that was contained  
 20 within State's Exhibit 29-A?  
 21 A. Yes, I did.  
 22 Q. All right. Can you tell the members of the Jury  
 23 from which bag, if you can, the swab's collected? In  
 24 other words, which round?  
 25 A. This one.

1 Q. When you say "this one", you're indicating  
 2 State's Exhibit 74-A; is that correct?  
 3 A. That's correct.  
 4 Q. This is the swab -- this is the round that you  
 5 swabbed in an attempt to get contact DNA?  
 6 A. That's correct.  
 7 Q. All right. Now, Ms. Lopez, I'm showing you  
 8 what's been marked as State's Exhibit 337. Do you  
 9 recognize State's Exhibit 337?  
 10 A. Yes, I do.  
 11 Q. How do you recognize this exhibit?  
 12 A. I also see our lab number and my initials and  
 13 signature on here.  
 14 Q. And what was your lab number?  
 15 A. Our lab number was FW10-04242.  
 16 Q. And where are your initials?  
 17 A. They're written on this "Submitted By" and also  
 18 on the seal.  
 19 Q. All right. And can you tell the members of the  
 20 Jury what State's Exhibit thirty -- I'm sorry -- 337  
 21 contains or contained at the time you collected it?  
 22 A. Yes. This is the envelope that I placed my  
 23 samples that I collected from a blue bandanna, a white  
 24 towel, the handgun, the magazine, and the live round. I  
 25 placed them in this envelope for storage.

180

1 Q. All right. Can you tell the members of the Jury  
 2 how you go about screening a piece of fabric or material?  
 3 I think you mentioned earlier that you begin with a visual  
 4 inspection. What happens next?  
 5 A. Once I made the visual inspection, I can identify  
 6 on here just looking at it there are some stains. So I  
 7 wanted to know what those stains may be, so I'll take a  
 8 small sample of it and perform a presumptive test for  
 9 blood to see if I can identify blood. If I do find that  
 10 there's blood on here, I will collect it with either a  
 11 cutting or a swabbing.  
 12 Also, it was requested on this that I collect  
 13 contact DNA. So to do that, I want to take a swabbing of  
 14 this item, this fabric item, and try to avoid any of the  
 15 stained areas. Because contact DNA is usually skin cells  
 16 which you cannot see with your visual eye, so you're going  
 17 to want to take a swabbing of an area around the stains,  
 18 so I wanted to try to avoid the blood stains.  
 19 Q. So, first of all, you do a visual inspection?  
 20 A. Yes.  
 21 Q. All right. And then next, is that when you test  
 22 for blood?  
 23 A. Yes.  
 24 Q. Okay. And I believe you mentioned that there was  
 25 a test that you do that's a presumptive test for blood.

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1 Q. Okay. So it contained each of the swabs, the two  
 2 swabs from the trigger, the two swabs from the grip, the  
 3 swab from the live round, and the swab from the magazine;  
 4 each of those were placed inside of State's Exhibit 337;  
 5 is that correct?  
 6 A. That's correct.  
 7 Q. And, in addition, did you review a -- or did you  
 8 look at what was collected from the Dodge Stratus, a blue  
 9 bandanna and a white towel as well?  
 10 A. Yes, I did.  
 11 Q. And what was the purpose in looking at these?  
 12 A. I was trying to identify some body fluids, maybe  
 13 contact DNA.  
 14 Q. All right.  
 15 A. And blood.  
 16 Q. Now, beginning first with State's Exhibit 82,  
 17 which I'll represent was removed from State's Exhibit  
 18 82-A, and do you recognize State's Exhibit 82-A?  
 19 A. Yes, I do.  
 20 Q. How do you recognize State's Exhibit 82-A?  
 21 A. It also has that unique lab number and my  
 22 initials on it.  
 23 Q. All right. So is State's Exhibit 82 the blue  
 24 bandanna that you screened for evidence?  
 25 A. Yes.

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1 What does that mean?  
 2 A. A presumptive test is a chemical color change  
 3 test, and what it does is it's going to give us an idea if  
 4 we're on the right track. If I see a brown or a red stain  
 5 on something, I think it may be blood, I'm going to  
 6 perform a presumptive test.  
 7 And depending on that test, if I get a  
 8 positive result, then I know I'm going to need to do some  
 9 further testing to identify it as blood. If I get a  
 10 negative result, I can stop right there.  
 11 Q. All right. Now, so something may look like blood  
 12 but it may not, in fact, be blood?  
 13 A. That's correct.  
 14 Q. So this is a test, it's kind of a first step to  
 15 see whether or not it may be blood?  
 16 A. Yes.  
 17 Q. Okay. And what -- does it have a particular  
 18 name?  
 19 A. The one we use is called the leucomalachite green  
 20 test.  
 21 Q. All right. And did you conduct this test, the  
 22 leucomalachite green test on some of the spots on the blue  
 23 bandanna that appeared to be blood?  
 24 A. Yes, I did.  
 25 Q. Were they positive for blood?

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1 A. Yes, they were.  
 2 Q. All right. When you have a presumptive that is  
 3 positive for blood, what's the next step?  
 4 A. If we have enough of a sample there, we'll try to  
 5 characterize that as human blood. So we'll perform the  
 6 next test that's called a human trace test. And that's  
 7 what I did on this bandanna.  
 8 Q. What were the results?  
 9 A. It was positive for human blood.  
 10 Q. And so did you take a swab of some of the blood  
 11 stains on State's Exhibit 82?  
 12 A. Yes, I did.  
 13 Q. Okay. And did you collect those swabs?  
 14 A. Yes, I did. I collected two swabs from the  
 15 stain.  
 16 Q. And those were also contained within State's  
 17 Exhibit 337; is that correct?  
 18 A. That's correct.  
 19 Q. All right. And did you also take some further  
 20 swabs for contact DNA purposes?  
 21 A. Yes, I did.  
 22 Q. And do you swab over the blood when you take  
 23 those samples?  
 24 A. No. I try to avoid the stained areas.  
 25 Q. Did you do that in this case?

1 A. That's correct.  
 2 Q. Why did you take a cutting?  
 3 A. I was able to identify human blood on this item.  
 4 Q. When you said you were able to identify human  
 5 blood, did you go about testing it the same way that you  
 6 tested the bandanna?  
 7 A. Yes, I did.  
 8 Q. What determines when you take a swab versus when  
 9 you take a cutting?  
 10 A. The material of the item will determine. If it's  
 11 a thick item, such as a towel, I will make a cutting. If  
 12 it's a thin item or something that can't be cut, then I  
 13 will take swabbings, and that's what I did with the  
 14 bandanna.  
 15 Q. All right. Thank you very much. And, Ms. Lopez,  
 16 I'm going to ask you to go ahead and open State's Exhibit  
 17 337, please.  
 18 A. (Witness complied.)  
 19 Q. Okay. Now, Ms. Lopez, I'm showing you what's  
 20 been marked for identification purposes as 337-A. Is  
 21 337-A the envelope containing the two swabs from the  
 22 trigger area of the Hi-Point handgun?  
 23 A. Yes, it is.  
 24 Q. I'm showing you what's been marked as State's  
 25 Exhibit 337-B. Is that the envelope containing the two

1 A. Yes, I did.  
 2 Q. And when those swabs were collected, were they  
 3 placed into State's Exhibit 337?  
 4 A. Yes, they were.  
 5 Q. Okay. Now, with regard to the white towel  
 6 that was found in connection with the blue bandanna  
 7 in the Dodge Stratus, do you recognize State's Exhibit 83?  
 8 A. Yes, I do.  
 9 Q. How do you recognize State's Exhibit 83?  
 10 A. By the initials that are placed on the towel.  
 11 Q. Okay. And you're looking inside the plastic bag  
 12 that contains State's Exhibit 83 and you see your black  
 13 markings?  
 14 A. Yes, I do.  
 15 Q. And can you show the members of the Jury where  
 16 those would be?  
 17 A. They're located right here on the tag of the  
 18 towel.  
 19 MS. JACK: I would ask you to stand up, if  
 20 that's okay with Your Honor.  
 21 THE COURT: Yes, ma'am.  
 22 A. I can recognize my initials right here underneath  
 23 the tag of the towel.  
 24 Q. Okay. So you know that that's one and the same  
 25 towel from which you took a cutting?

1 swabs from the front and back textured grip area of the  
 2 Hi-Point handgun?  
 3 A. Yes, it is.  
 4 Q. I'm showing you what's been marked as State's  
 5 Exhibit 337-C. Is this the envelope containing the one  
 6 swab from the magazine?  
 7 A. Yes, it is.  
 8 Q. I'm now showing you what's been marked as State's  
 9 Exhibit 337-D. Is this the envelope containing the swab  
 10 from the crevice of the live round?  
 11 A. Yes, it is.  
 12 Q. I'm showing you what's been marked as State's  
 13 Exhibit 337-E for identification purposes. And is this  
 14 the envelope that contains the two swabs from the  
 15 bandanna?  
 16 A. Yes, it is.  
 17 Q. And what are the -- what does the word "H.T.O."  
 18 stand for?  
 19 A. H.T. is a abbreviation we use for the Human Trace  
 20 test, which is the one we use to identify human blood.  
 21 The symbol next to it is a positive. That means we've got  
 22 human blood positive on this sample.  
 23 Q. Okay. So State's Exhibit 337-E contains the  
 24 swabs of the blood from the bandanna?  
 25 A. That's correct.

1 Q. Okay. I'm showing you what's been marked as  
 2 State's Exhibit 337-F for identification purposes. Does  
 3 this envelope contain the swabs from the blue bandanna for  
 4 contact DNA purposes?

5 A. Yes, it does.

6 Q. And, lastly, I'm showing you what's been marked  
 7 as State's Exhibit 337-G for identification purposes. Is  
 8 this the envelope containing the cutting from the white  
 9 towel that you collected?

10 A. Yes, it does.

11 Q. Now, in each of these smaller envelopes, A  
 12 through G, if we were to feel inside, what would you  
 13 feel?

14 A. Feels like there's a swab inside of it.

15 Q. So when we say a "swab," what does a swab look  
 16 like?

17 A. Like a Q-tip.

18 Q. Just a scientific Q-tip?

19 A. Yes. That's what it is, a sterile Q-tip when we  
 20 start.

21 MS. JACK: All right. Your Honor, at this  
 22 time the State would offer State's Exhibit No. 337, the  
 23 larger envelope for record purposes, and State's  
 24 Exhibits 337-A through G and their contents for all  
 25 purposes.

1 Q. So you were present when he collected all of  
 2 this?

3 A. Yes, I was.

4 Q. You made him follow all the rules?

5 A. Yes.

6 Q. Not that he wouldn't have anyway, but he did?

7 A. Yes, he did.

8 Q. He collected those stubs and that was done in  
 9 your presence and they were turned in to the Fort Worth  
 10 Property Control Area; is that correct?

11 A. Yes, they were.

12 Q. All right. And I'm showing you what's been  
 13 marked as State's Exhibit 338 for identification  
 14 purposes. Do you recognize this exhibit?

15 A. Yes, this is the envelope that Ken Robertson  
 16 placed the stubs in.

17 Q. Okay. In your presence?

18 A. Yes.

19 Q. Can you please open up State's Exhibit 338.

20 A. (Witness complied.)

21 Q. Within State's Exhibit 338, is there another  
 22 envelope?

23 A. Yes, there is.

24 Q. All right. Do you recognize the initials on the  
 25 back here?

189 MR. WESTFALL: No objection, Your Honor.

2 THE COURT: Admitted.

3 (State's Exhibit No. 337 admitted for  
 4 record purposes only.)

5 (State's Exhibit Nos. 337-A through 337-G  
 6 admitted.)

7 Q. (BY MS. JACK) Now, were some G.S.R. stubs  
 8 collected from the bandanna as well when you had it out  
 9 and were processing it in the Crime Lab?

10 A. Yes, there were.

11 Q. All right. And who did the G.S.R. testing on the  
 12 blue bandanna?

13 A. The stubs were collected by Crime Scene Officer  
 14 Ken Robertson.

15 Q. And were the same quality assurance measures in  
 16 place when you-all collected the G.S.R. stubs as when you  
 17 were collecting all of the other contact DNA swabs, the  
 18 samples of the blood, the cuttings, that type of thing?

19 A. Yes. I made Officer Robertson wear his gloves,  
 20 his mask, and his lab coat.

21 Q. Was he happy about that?

22 A. Probably not.

23 Q. All right. But you're kind of the one in charge  
 24 of the lab at that point?

25 A. I was, yes.

1 A. Yes, I do. That's Ken Robertson's initials.

2 Q. Okay. And this is the same G.S.R. kit that was  
 3 collected or the stubs that were collected in your  
 4 presence?

5 A. Yes.

6 Q. Okay. Can you please go ahead and open State's  
 7 Exhibit 338-A.

8 A. (Witness complied.)

9 Q. And did I just remove the contents from State's  
 10 Exhibit No. 338-A and place them in a clear plastic baggy  
 11 marked State's Exhibit 338-A-1?

12 A. Yes.

13 MS. JACK: Your Honor, at this time the State  
 14 will offer State's Exhibits 338, 338-A for record  
 15 purposes, and State's Exhibit 338-A-1 for all purposes.

16 MR. WESTFALL: No objection, Your Honor.

17 THE COURT: Admitted.

18 (State's Exhibit No. 338-A-1 admitted.)

19 (State's Exhibit No. 338 and 338-A admitted  
 20 for record purposes.)

21 Q. (BY MS. JACK) And, Ms. Lopez, did you also screen  
 22 some clothing in connection with these two Defendants?

23 A. Yes, I did.

24 MS. JACK: May I have just a moment, Your  
 25 Honor, to move all the clothing up there?



1 Jury what you found when you screened Mr. Soliz's black  
 2 T-shirt?  
 3 A. I was able to identify human blood on this item.  
 4 Q. All right. And was that with the presumptive  
 5 test?  
 6 A. Yes, I did the presumptive test, and then I  
 7 followed it with the Human Trace test.  
 8 Q. All right. And when you found the presence of  
 9 blood and that it was human blood, what did you do next?  
 10 A. I collected a cutting from the item. I collected  
 11 the -- I collected the entire stain as a sample.  
 12 Q. Do you know about how big the stain was?  
 13 A. Yes. The stain was very small. I have it in my  
 14 notes that it was .25 centimeters by .25 centimeters.  
 15 Q. Okay. So not a large amount at all?  
 16 A. No.  
 17 Q. But you collected the stain as a cutting?  
 18 A. Yes, I did.  
 19 Q. Okay. Now, you mentioned that the Fort Worth  
 20 Crime Lab has an Evidence Screening, Serology DNA  
 21 section. At that time, was the Fort Worth Crime Lab  
 22 conducting DNA analysis?  
 23 A. No.  
 24 Q. Now, with regard to Item 0330-03, what would that  
 25 be?

1 Ramos.  
 2 Q. Okay. And I'm showing you what's been admitted  
 3 into evidence as State's Exhibit 136, and the packaging  
 4 associated with it as 136-A. Do you recognize the  
 5 packaging?  
 6 A. Yes. I recognize the lab number and my initials.  
 7 Q. Okay. And each of these bags are open now, but  
 8 at the time that you receive them, are they all sealed?  
 9 A. Yes, they are.  
 10 Q. And when you return them to the Property Control  
 11 Area, are they likewise sealed as well?  
 12 A. Yes, they are.  
 13 Q. Okay. Can you tell the members of the Jury what  
 14 your examination of Mr. Ramos's black denim shorts showed?  
 15 A. Upon examination of this item, I found a cotton  
 16 ball inside the -- the closet, sorry -- the pocket of this  
 17 item, and the cotton ball tested positive for human blood.  
 18 Q. Okay. And what did you do as a result?  
 19 A. I collected that entire cotton ball.  
 20 Q. And that -- did that become Item No. 0330-04-A?  
 21 A. Yes, it -- yes, it did.  
 22 Q. Now, with regard to Item 0330-05, can you tell  
 23 the members of the Jury what that item or those items  
 24 were?  
 25 A. Those were black T-shirts collected from Jose

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1 A. That item is a white sleeveless shirt collected  
 2 from Mark Soliz.  
 3 Q. I'm showing you what's already been admitted into  
 4 evidence as State's Exhibit 133, and the packaging  
 5 associated with it marked as State's Exhibit 133-A. Do  
 6 you recognize the packaging?  
 7 A. Yes, I do.  
 8 Q. How do you recognize that?  
 9 A. The lab number and my initials.  
 10 Q. Okay. So this is the same T-shirt that you  
 11 screened?  
 12 A. Yes.  
 13 Q. All right. Can you tell the members of the Jury  
 14 what your results were?  
 15 A. I did not find any blood or stains that could be  
 16 blood on this sample -- sorry, on this item.  
 17 Q. Okay. And so was there any necessity to take a  
 18 cutting?  
 19 A. No, there was not.  
 20 Q. Or to swab anything?  
 21 A. No.  
 22 Q. Okay. Now, looking at Item No. 0330-04, all  
 23 right, can you tell the members of the Jury what item that  
 24 would be?  
 25 A. These are black denim shorts collected from Jose

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1 Ramos.  
 2 Q. Okay. Now, you say "black T-shirts". Why do you  
 3 say black T-shirts, plural?  
 4 A. Whenever I opened the package, I found that there  
 5 were two T-shirts, one inside of another, as if it were  
 6 taken off as one item.  
 7 Q. Now I'm showing you what's been marked as State's  
 8 Exhibit 135, and the packaging associated with it as  
 9 State's Exhibit 135-A. Do you recognize this packaging?  
 10 A. Yes. I recognize the lab number and my initials.  
 11 Q. And once again, was this sealed when you received  
 12 it?  
 13 A. Yes, it was.  
 14 Q. Okay. And it was sealed once again when you  
 15 returned it to the Property Control Area; is that correct?  
 16 A. That is correct.  
 17 Q. Okay. Did you screen these items for evidence?  
 18 A. Yes, I did.  
 19 Q. Can you tell the members of the Jury what you  
 20 found?  
 21 A. I found -- I performed a presumptive test on a  
 22 stain that was located on this item, and it was a very  
 23 weak positive presumptive. And based on my experience, I  
 24 know that I can get better results from DNA testing than I  
 25 can trying to identify something as human. So on this

1 particular item, I made the choice just to collect the  
 2 presumptive positive and skip the human blood  
 3 confirmation.

4 Q. Okay. So the rest of the sample would not be  
 5 consumed in further testing?

6 A. That's right.

7 Q. Okay. And did you collect that sample?

8 A. Yes, I did.

9 Q. And did that become Item No. 0330-05-A?

10 A. Yes, it did.

11 Q. Was that a cutting that you took?

12 A. Yes.

13 Q. And did you also collect some hairs off of these  
 14 two T-shirts as well?

15 A. Yes, I did.

16 MS. JACK: Okay. May I have a moment, Your  
 17 Honor? I'm missing one piece of evidence.

18 (Pause in proceeding.)

19 Q. Okay. Ms. Lopez, I'm showing you what's been  
 20 admitted into evidence as State's Exhibit 172, and the  
 21 packaging associated with it as State's Exhibit 172-A.

22 A. Okay.

23 Q. Okay. Do you recognize the packaging, State's  
 24 Exhibit 172-A? You can open it up if you need to.

25 A. I recognize my initials on this item and the

1 size was 2 centimeters by 1 centimeter, and I collected  
 2 that entire stain.

3 Q. Okay. And was that taken from the front of his  
 4 blue jeans, the back of his blue jeans? What was the  
 5 location of that cutting?

6 A. Let me check and see. That item was collected  
 7 from the front side, the front of the blue jeans near the  
 8 pocket.

9 Q. Okay. Was there a second cutting that was taken  
 10 from the blue jeans?

11 A. Yes, there was.

12 Q. And where was that cutting taken from?

13 A. That was collected from the back side of the  
 14 jeans.

15 Q. And would that have been Item 8449-03-AA?

16 A. Yes, it was.

17 Q. Did you bring the packaging with you that was  
 18 used when you collected each of those cuttings?

19 A. Yes, I did.

20 Q. Okay. Now, when you send an item off for DNA  
 21 testing, are those samples many times retained by the lab  
 22 that did the DNA testing?

23 A. Yes, they are.

24 Q. Was that the case in each of these cuttings from  
 25 the Defendant's clothing?

201 1 unique lab number.

2 Q. Okay. So these are one and the same pants as  
 3 were collected from Mark Soliz?

4 A. That's correct.

5 Q. Okay. And did you perform or conduct some  
 6 evidence screening on Mr. Soliz's blue jeans?

7 A. Yes, I did.

8 Q. Can you tell the members of the Jury what your  
 9 results were?

10 A. I was able to identify human blood on this item.

11 Q. Okay. And when you were able to identify Human  
 12 blood, was it a little bit, was it a lot? Can you give  
 13 the Jury an idea?

14 A. I tested many stains on this item, and I got  
 15 presumptive positive on quite a few. I chose two to  
 16 collect.

17 Q. All right. The sizes of the stains, were the  
 18 sizes small or can you give the Jury an idea of what size  
 19 they were?

20 A. They -- well, there was quite a bit of staining  
 21 on this item. The -- do you want to know the size of the  
 22 ones I collected?

23 Q. Yes, please.

24 A. Okay. The first item I collected, 8449-03-A, the  
 25 sample that I collected was 2 -- I'm sorry. The stain

203 1 A. Yes.

2 Q. So when the Medical Examiner's office did their  
 3 DNA testing, were the items or your samples returned to  
 4 the Fort Worth Property -- to the Fort Worth Crime Lab?

5 A. For these samples, all we received back from the  
 6 Medical Examiner's office was packaging. They retain the  
 7 actual samples in their laboratory.

8 Q. And I'm showing you what's been marked as State's  
 9 Exhibit 339 and State's Exhibit 340. Do you recognize  
 10 both of these exhibits?

11 A. Yes, I do.

12 Q. And how do you recognize them?

13 A. The unique lab number and my signature.

14 Q. Okay. And there appears to be quite a few stamps  
 15 on each of these envelopes, or stickers?

16 A. Yes.

17 Q. Would those be typical or characteristic of  
 18 evidence labeling by the Tarrant County Medical Examiner's  
 19 Office?

20 A. Yes, they are.

21 MS. JACK: Your Honor, the State would offer  
 22 State's Exhibit 339 and State's Exhibit 340 for record  
 23 purposes only.

24 MR. WESTFALL: May I see it?

25 MS. JACK: Sure.

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1 MR. WESTFALL: No objection, Your Honor.  
 2 THE COURT: Admitted.  
 3 (State's Exhibit Nos. 339 - 340 admitted for  
 4 record purposes only.)  
 5 Q. (BY MS. JACK) Ms. Lopez, for clarification  
 6 purposes, there's nothing in these envelopes, right?  
 7 A. No. It's just packaging.  
 8 Q. The actual samples are retained at the Tarrant  
 9 County Medical Examiner's office?  
 10 A. Yes, that's correct.  
 11 Q. Is that often the case with biological samples?  
 12 A. Yes.  
 13 Q. Why is that?  
 14 A. They -- the lab that tests the sample wants to  
 15 store it so that they can test it again if it's necessary.  
 16 Q. And let me ask you this. When samples are  
 17 tested, many times do the individuals that conduct the DNA  
 18 analysis make every effort to leave enough samples that in  
 19 event the Defense wants to retest, they can?  
 20 A. Yes, they do.  
 21 Q. Okay. So it's not just there's evidence just for  
 22 the State to test; there's evidence that the Defense can  
 23 test?  
 24 A. Yes, that's correct.  
 25 Q. If they choose to.

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1 Medical Examiner's Office, whether it's UNT, regardless of  
 2 what laboratory it is, do each of those laboratories  
 3 employ the same kind of security precautions that the Fort  
 4 Worth Crime Lab strives to employ in every case?  
 5 A. Yes, they do.  
 6 Q. Every effort is made to preserve that chain of  
 7 custody from the beginning to the end?  
 8 A. Yes, that's correct.  
 9 Q. There and back?  
 10 A. Yes.  
 11 MS. JACK: Okay. With that, Your Honor, I  
 12 believe I'll pass the witness.  
 13 MR. WESTFALL: Thank you, Your Honor.  
 14 CROSS-EXAMINATION  
 15 BY MR. WESTFALL:  
 16 Q. Hello, Ms. Lopez.  
 17 A. Hi.  
 18 Q. Would you please tell the Jury what "contact DNA"  
 19 is?  
 20 A. Contact DNA is what we refer to, you often hear  
 21 it as "touch DNA". And it's if somebody touches an item  
 22 of evidence and a friction is created, and the skin cells,  
 23 sweat cells transfer onto that item, that's what we refer  
 24 to as contact DNA.  
 25 Q. And so from a fingerprint, if you just touch

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1 A. That's correct.  
 2 MS. JACK: May I have a moment, Your Honor?  
 3 May I approach the witness again, Your Honor?  
 4 THE COURT: Yes, ma'am.  
 5 Q. Ms. Lopez, I'm showing you what's been marked for  
 6 identification purposes as State's Exhibit 341, State's  
 7 Exhibit 342 and State's Exhibit 343. Do you recognize  
 8 each of these exhibits?  
 9 A. Yes, I do.  
 10 Q. How do you recognize them?  
 11 A. These are my official laboratory reports.  
 12 Q. And were these the summary of the evidence  
 13 screening and your results that you just testified to this  
 14 Jury?  
 15 A. Yes. Can I make sure my signature is on those?  
 16 Q. Please.  
 17 A. Okay. Yes, they are.  
 18 MS. JACK: Your Honor, at this time State  
 19 would offer State's Exhibits 341, 342 and 343 into  
 20 evidence for all purposes.  
 21 MR. WESTFALL: No objection, Your Honor.  
 22 THE COURT: Admitted.  
 23 (State's Exhibit Nos. 341 - 343 admitted.)  
 24 Q. (BY MS. JACK) And when samples are sent off to  
 25 other labs, I believe I asked you this, whether it's the

205

1 something, then somebody could come along and swab that  
 2 and get like a full DNA match out of that?  
 3 A. You're not likely to get a full DNA profile out  
 4 of a fingerprint, but you leave DNA behind when you do  
 5 touch an item.  
 6 Q. I guess it's possible though, huh?  
 7 A. I would say probably a partial profile would be  
 8 possible.  
 9 Q. Okay. Well, did you -- were you the person that  
 10 all the gunshot residue got sent to or did that --  
 11 A. No.  
 12 Q. -- some of that go straight to Kelly Belcher?  
 13 A. That went straight to the T.C.M.E.  
 14 Q. The what?  
 15 A. Tarrant County Medical Examiner.  
 16 Q. Oh, okay.  
 17 A. Trace Area.  
 18 Q. And, in fact, there -- I'm trying to round -- I'm  
 19 sorry.  
 20 A. That's okay.  
 21 Q. Give me a second to round this up. There's  
 22 several different labs that do DNA, right?  
 23 A. Yes, there are.  
 24 Q. And due to some circumstances back in Tarrant  
 25 County, the Crime Lab stopped doing it for a while, and

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1 then Orchid Cellmark was one of the places that did the  
 2 DNA for the county, right?  
 3 A. No, I don't know if Orchid Cellmark has done any  
 4 testing for the County.  
 5 Q. Okay. How long have you been working there?  
 6 A. I work for the Fort Worth Police Department.  
 7 Q. Okay. For how long?  
 8 A. I've been there for 11 years.  
 9 Q. 11 years, and you don't realize that Orchid  
 10 Cellmark has done work for Tarrant County?  
 11 A. I don't work at Tarrant County so I don't -- I  
 12 don't know who does testing for them.  
 13 Q. Okay. Did you know that University of North  
 14 Texas does DNA testing?  
 15 A. Yes.  
 16 Q. And you've submitted stuff to University of North  
 17 Texas?  
 18 A. Yes, I have.  
 19 Q. And Tarrant County Medical Examiner does DNA  
 20 testing?  
 21 A. That's correct.  
 22 Q. You've submitted stuff to them?  
 23 A. Yes.  
 24 Q. And now, I guess, y'all do DNA testing in-house?  
 25 A. Not yet. We're in the process of setting it up.

1 Q. And this is the one actually that has the -- has  
 2 the black denim shorts and the pants, the clothing of both  
 3 Ramos and Soliz?  
 4 A. Yes, it is.  
 5 Q. And who did you submit that to?  
 6 A. The cuttings from the shorts?  
 7 Q. Yes.  
 8 A. After I collected my samples, I submitted those  
 9 to our Fort Worth Property Room, and then they were later  
 10 outsourced. Those items were later outsourced to the  
 11 Tarrant County Medical Examiner's Office for DNA testing.  
 12 Q. So you wouldn't have received the report back?  
 13 A. No.  
 14 Q. Could I see any UNT reports that you might have?  
 15 A. Yes. These are the two UNT reports that I have,  
 16 and these are from the items from the -- I mean the  
 17 samples collected from the bandanna, and the towel and the  
 18 weapon.  
 19 Q. Is there any difference to these?  
 20 A. Let me check. There should be.  
 21 Q. I see different dates but I don't see --  
 22 A. One is titled Forensic DNA Report, and the other  
 23 is titled Forensic DNA Report No. 2. I don't know at the  
 24 moment what the difference is in there in the UNT reports.  
 25 Q. Let me show you a picture here really fast. This

209  
 1 Q. Okay. Do you find out the results when you send  
 2 stuff away?  
 3 A. If we request the testing, we'll receive a DNA  
 4 report.  
 5 Q. So you know then that all the DNA that was on  
 6 those pants that Mark Soliz was wearing was his own?  
 7 A. I'm not -- did Tarrant County do the DNA testing  
 8 on that item? If Tarrant County did the testing, we  
 9 didn't request that one, so I wouldn't have received the  
 10 DNA report for that item. The report that we received was  
 11 from UNT.  
 12 Q. Just because you package the stuff up, that  
 13 doesn't mean that you're going to get the report back?  
 14 A. No, unfortunately not.  
 15 Q. Here is one of your reports that was just put  
 16 into evidence.  
 17 MR. WESTFALL: I don't have a clue how to  
 18 work that.  
 19 THE COURT: Just input select. It says  
 20 input. It's right on the front. Little gray button says  
 21 input select, just push it.  
 22 MR. WESTFALL: Okay. Very good.  
 23 Q. (BY MR. WESTFALL) This is one of your reports  
 24 that was just put in?  
 25 A. Yes.

211  
 1 is already in evidence as State's Exhibit 93. You would  
 2 have no reason to -- to know what that is?  
 3 A. No, I don't recognize.  
 4 Q. But this is the truck of a fellow name Jorge  
 5 Contreras Carvajal, and it would be your lab No.  
 6 10-04352-2. Would you please look for that for me.  
 7 A. What's that number again?  
 8 Q. Here.  
 9 A. Okay. That -- this report shows the swabs, five  
 10 swabs.  
 11 Q. Yes.  
 12 A. Okay. Okay.  
 13 Q. Do you have it there with you?  
 14 A. Yes, I do.  
 15 Q. Okay. Now, does it look like you submitted those  
 16 five swabs to the University of North Texas?  
 17 A. Yes, I did.  
 18 Q. Did you get a report back dealing with those five  
 19 swabs?  
 20 A. No, I did not.  
 21 Q. So you submitted the evidence to the University  
 22 of North Texas to be DNA tested, and they just never sent  
 23 it back; they just never sent you a report?  
 24 A. For some reason they did not do the testing on  
 25 that item.

211 1 is already in evidence as State's Exhibit 93. You would  
 2 have no reason to -- to know what that is?  
 3 A. No, I don't recognize.  
 4 Q. But this is the truck of a fellow name Jorge  
 5 Contreras Carvajal, and it would be your lab No.  
 6 10-04352-2. Would you please look for that for me.  
 7 A. What's that number again?  
 8 Q. Here.  
 9 A. Okay. That -- this report shows the swabs, five  
 10 swabs.  
 11 Q. Yes.  
 12 A. Okay. Okay.  
 13 Q. Do you have it there with you?  
 14 A. Yes, I do.  
 15 Q. Okay. Now, does it look like you submitted those  
 16 five swabs to the University of North Texas?  
 17 A. Yes, I did.  
 18 Q. Did you get a report back dealing with those five  
 19 swabs?  
 20 A. No, I did not.  
 21 Q. So you submitted the evidence to the University  
 22 of North Texas to be DNA tested, and they just never sent  
 23 it back; they just never sent you a report?  
 24 A. For some reason they did not do the testing on  
 25 that item.

213 1 evidence -- that's from inside the interior of that  
 2 truck. And then the contact DNA from Sammy Abu-Lughod's  
 3 Dodge Stratus, which, once again, it's in evidence, I'll  
 4 just tell you, contact DNA from inside the car.  
 5 A. Okay.  
 6 Q. Those two things apparently, even though you  
 7 submitted them, they were never tested?  
 8 A. Okay.  
 9 Q. Is that true?  
 10 A. We did not receive a report so I have to assume  
 11 they weren't tested by UNT.  
 12 MR. WESTFALL: Pass the witness, Your Honor.  
 13 REDIRECT EXAMINATION  
 14 BY MS. JACK:  
 15 Q. Did you know that the bandanna and the towel that  
 16 were also found in the Stratus were tested?  
 17 A. Yes, they were.  
 18 Q. And they were tested by the Medical Examiner's  
 19 Office?  
 20 A. Yes. And they were also tested by the University  
 21 of North Texas Health Science Center.  
 22 Q. And so while three swabs were not, other items in  
 23 the car that contained blood were tested?  
 24 A. Yes.  
 25 Q. Okay. And do you know whether or not the

212 1 Q. All right. Please go to your Fort Worth Lab  
 2 No. 04242.  
 3 A. Okay.  
 4 Q. Did you find it?  
 5 A. Yes, I did.  
 6 Q. Is there a form in there showing three swabs of  
 7 contact DNA going to University of North Texas as well?  
 8 A. The swabs that I collected from the bandanna, the  
 9 handgun, the magazine and live rounds?  
 10 Q. No; 9102-10, 9102-11 and 9102-12.  
 11 A. Yes. I see that. I have it.  
 12 Q. And those are not from the bandanna and whatnot.  
 13 A. No.  
 14 Q. Those are contact swabs from the car, right?  
 15 A. I believe they're from a Dodge Stratus.  
 16 Q. A Stratus, exactly. The car that belongs to --  
 17 we've got it up here -- Sammy Abu-Lughod.  
 18 A. Okay.  
 19 Q. And is this another situation where UNT just  
 20 never did the testing, never sent you a report?  
 21 A. No, we did not get a report from UNT on this  
 22 item.  
 23 Q. So the DNA, the contact DNA from the case  
 24 involving Jorge Carvajal -- which is in evidence, I'll  
 25 just tell you, you don't know this, but it's in

214 1 bandanna came back to the Defendant, that it was his  
 2 blood?  
 3 A. I would have to look at -- I would have to look  
 4 at UNT's report to know. Their report doesn't say.  
 5 Q. Does it give a profile?  
 6 A. Yes, it does.  
 7 MS. JACK: All right. Thank you.  
 8 I'll pass the witness, Judge.  
 9 RECROSS-EXAMINATION  
 10 BY MR. WESTFALL:  
 11 Q. But we have no profile for the two automobiles,  
 12 the contact DNA, because it was never tested or sent back  
 13 to you, right?  
 14 A. No, I don't have a UNT report for those items.  
 15 Q. So on Jorge Carvajal Contreras, some Crime Scene  
 16 officer took the time to collect five swabs, you took the  
 17 time to send it to North Texas, and nothing happened; is  
 18 that right?  
 19 A. I -- apparently; I didn't receive a report.  
 20 Q. And then on Sammy Abu-Lughod, some other Crime  
 21 Scene officer took the time to collect contact DNA from  
 22 inside the car, properly submitted it to you, you did  
 23 everything you were supposed to do, you sent it to UNT,  
 24 and it just vaporized, nothing happened?  
 25 A. I didn't get a report.

215	<p>1 Q. Okay. Which means nothing happened, right?  2 A. Hopefully there's no vaporization.  3 MR. WESTFALL: Thank you, Your Honor.  4 MS. JACK: I have nothing further. I would  5 ask this witness be excused.  6 THE COURT: May the witness be excused?  7 MR. WESTFALL: She may.  8 THE COURT: Thank you. You may be excused.  9 (Witness excused.)  10 THE COURT: Do you have another witness?  11 MS. JACK: Yes, Your Honor. We call  12 Detective Jay Kniffen.  13 (Witness sworn.)  14 THE COURT: Thank you.  15 MS. JACK: Thank you, Your Honor.  16 JAY KNIFFEN,  17 Having been first duly sworn, testified as follows:  18 DIRECT EXAMINATION  19 BY MS. JACK:  20 Q. Detective, could you please introduce yourself to  21 the ladies and gentlemen of the Jury?  22 A. My name is Jay Kniffen.  23 Q. And can you tell them how you're employed?  24 A. I work with the Johnson County Sheriff's Office  25 as a detective.</p>
216	<p>1 Q. All right. What do you do as a detective?  2 A. Crimes against persons, assaults, manslaughters,  3 aggravated assaults, things like that.  4 Q. So are you responsible for responding to a crime,  5 investigating the crime, and apprehending the individual  6 responsible?  7 A. Yes.  8 Q. Okay. How long have you been with the Johnson  9 County Sheriff's Department?  10 A. Eight years.  11 Q. Are you a certified police officer in the State of  12 Texas?  13 A. Yes.  14 Q. How many years all told have you been in law  15 enforcement?  16 A. Almost 12.  17 Q. Okay. Were you on duty on June 30th of 2010?  18 A. I was.  19 Q. All right. Were you asked to respond to 14356  20 North FM 2331?  21 A. Yes.  22 Q. And can you tell the members of the Jury what  23 that address is?  24 A. That address is the residence of a homicide  25 victim.</p> <p>1 Q. All right. How was it that you came to come  2 out -- how was it that you were called out there?  3 A. Lieutenant Gaudet called me out to that location.  4 Q. All right. And what was the purpose of your  5 coming out there?  6 A. To work a homicide.  7 Q. All right. What time did you get there?  8 A. 8:25.  9 Q. Did you go alone or were you with someone else?  10 A. I went with Detective Dalton.  11 Q. All right. What did you do once you arrived?  12 A. We walked down the driveway and went to the back  13 of the residence, then the back yard. Met with other  14 detectives there. We went in the house for about a  15 minute. Lieutenant Gaudet wasn't done videotaping, so we  16 all had to back out of the residence until he got  17 finished.  18 Q. All right. Once he finished videotaping the  19 crime scene, what did you do?  20 A. It was decided that me and Detective Dalton go to  21 Fort Worth P.D. and speak with detectives there.  22 Q. Who decided that?  23 A. Captain Fuller.  24 Q. All right. So you were asked to drive to Fort  25 Worth?</p>
218	<p>1 A. Right.  2 Q. What was the purpose of going to Fort Worth?  3 A. Pick up initial reports that they had in  4 reference to Mr. Soliz and to look at the victim's  5 vehicle.  6 Q. All right. When you got to Fort Worth, who did  7 you talk to?  8 A. Detective Rhoden.  9 Q. Where did you speak with him?  10 A. At the Fort Worth Police Department.  11 Q. Did you take -- did he take you to  12 Ms. Weatherly's truck?  13 A. Yes, he did.  14 Q. Do you know where it was stored at the time?  15 A. It was at the Fort Worth Police impound, 2500  16 Brennan Street.  17 Q. All right. Can you tell the members of the Jury  18 what you did once you saw her truck?  19 A. Took photos of the vehicle. While I was taking  20 photos of the vehicle, I noticed that there were a few  21 items in the bed of that vehicle; one was a black pair of  22 pants. There was a pair of gloves in there, and a  23 24-ounce Bud Light beer can, empty, open, and a Bud Light  24 beer bottle, also empty and open.  25 Q. Did you collect those items at that time?</p>

1 A. Not at that time. What we did, we ended up  
2 leaving, and then about an hour later, they wanted us to  
3 go back and collect -- actually get Ms. Weatherly's  
4 vehicle and tow it back to Johnson County Sheriff's  
5 Office.

6 Q. All right. And who towed it back to the Johnson  
7 County Sheriff's Office?

8 A. Reid's Wrecker.

9 Q. All right. Did you escort her truck back into  
10 Johnson County and into Cleburne?

11 A. Yes, we did.

12 Q. And is the Sheriff's Department in this building,  
13 as a matter of fact?

14 A. Yes, it is.

15 Q. All right. Was the truck towed to, I guess, the  
16 bottom level, the same level this courtroom is on?

17 A. Uh-huh.

18 Q. All right. Where is the opening to where the  
19 truck was towed into?

20 A. It would be the north side. We call it the  
21 north sally, but it's kind of the north side of the  
22 building.

23 Q. All right. How far away from this courtroom was  
24 her truck then?

25 A. A hundred yards, 75, something like that.

219

1 Q. All right.  
2 A. Blow out the bed.  
3 Q. Detective, I'm showing you what's been marked as  
4 State's Exhibit 214-A. Do you recognize State's Exhibit  
5 214-A?

6 A. Yes.

7 Q. And what is that?

8 A. It's Item No. 15, Bud Light beer can, and Item  
9 No. 16, Bud Light beer bottle.

10 Q. Okay. So is 214-A the packaging that contained  
11 both the beer bottle and the beer can?

12 A. Yes.

13 Q. And were both of these empty when you collected  
14 them?

15 A. Yes.

16 Q. All right. So they were pretty light?

17 A. Right.

18 Q. All right. And so you were the detective  
19 that collected both of these items and placed them  
20 in 214-A?

21 A. Right.

22 Q. Okay. Did you collect any other items of  
23 evidence from the truck?

24 A. We collected the black pair of pants. They're  
25 more like a -- a wind pant, I think. And then we

221

220 1 Q. All right. So that's where you process evidence  
2 like a truck?

3 A. That's where we processed that vehicle; or  
4 actually I didn't process it, but that's where it was  
5 processed.

6 Q. All right. And is that when you collected  
7 the beer can, the beer bottle, the gloves and the black  
8 pants?

9 A. No, that's not where we collected it. We --  
10 we -- once we went back, once it was decided that we tow  
11 the vehicle back to Johnson County, I collected those  
12 items then. If we would have left them in there, they  
13 would have blown out the back of the bed of the vehicle  
14 and took a chance on losing them, so that's why we  
15 collected them then.

16 MS. JACK: Okay. May I approach this  
17 witness, Your Honor?

18 THE COURT: Yes, you may.

19 Q. Was it a pretty windy day?

20 A. I can't remember.

21 Q. You were just worried if these items were in the  
22 back of the truck, driving down the road, they might get  
23 lost?

24 A. Well, you know, going 70 miles an hour down the  
25 highway, they could get lost.

222 1 collected -- there was a pair of black gloves that we  
2 also collected.

3 Q. Did you collect anything else?

4 A. No.

5 Q. Okay. How long were you there at the truck?

6 A. The first time for maybe 30, 35 minutes. The  
7 second time, physically at the truck, probably another 20  
8 minutes.

9 Q. All right. Do you remember about what time  
10 you arrived back in Cleburne with Ms. Weatherly's truck?

11 A. I believe it was around 5:30.

12 Q. All right. Once you had those items of evidence  
13 in your possession, what did you do with them?

14 A. We took them back to the Johnson County Sheriff's  
15 Office.

16 Q. All right. Where is that?

17 A. That is located at 1102 East Kilpatrick Street in  
18 Cleburne.

19 Q. And when you place evidence in storage there, is  
20 it a secure facility?

21 A. Yes.

22 Q. And are the -- all of the evidence -- are all  
23 pieces of evidence sealed and security precautions taken  
24 to make sure that they're protected?

25 A. Yes.

1 Q. All right. And did that conclude your  
2 involvement in this investigation?  
3 A. Yes, it did.  
4 Q. All right. Now, on September 24th of 2010, did  
5 you meet Mr. Soliz?  
6 A. I did.  
7 Q. Okay. Did you also meet Mr. Ramos?  
8 A. I did.  
9 Q. Were you asked to transport both prisoners to  
10 Johnson County?  
11 A. Yes, I was.  
12 Q. All right. And can you tell the members of the  
13 Jury how you went about doing that.  
14 A. Well, we just transported, me and another  
15 detective, Detective Ketchum or Deputy Ketchum, we went to  
16 Fort Worth, Tarrant County Jail, picked up the two,  
17 Mr. Soliz and Mr. Ramos, for our charges and we're going  
18 to bring them back to Johnson County. I don't really have  
19 a time on that, but we arrived at Tarrant County Jail,  
20 placed them in custody, got their belongings, put them in  
21 the vehicle, and then escorted them back to Johnson  
22 County.  
23 Q. Okay. Now, at the time that they were in Tarrant  
24 County, they were being held on capital murder charges; is  
25 that correct?

1 Q. Okay. And was this a secure car?  
2 A. Yes, it is.  
3 Q. All right. Now, when you're transporting  
4 somebody that is under arrest or in custody, is it part of  
5 the protocol of the Johnson County Sheriff's Department to  
6 turn on the videotape?  
7 A. Yes.  
8 Q. All right. So there was nothing different about  
9 this particular transport?  
10 A. No.  
11 Q. Okay. And they were transported together?  
12 A. Right.  
13 Q. They were in custody?  
14 A. Yes.  
15 Q. Were you asking them any questions?  
16 A. No.  
17 Q. Were they being interrogated in any way?  
18 A. No.  
19 Q. Were you asking them any questions designed to  
20 illicit any kind of incriminating response?  
21 A. No.  
22 Q. Is there any expectation of privacy in the back  
23 seat of a patrol car?  
24 A. No.  
25 Q. All right. Have you reviewed the videotape from

1 A. Correct.  
2 Q. And were they being brought to Johnson County to  
3 stand trial on capital murder charges here?  
4 A. Yes.  
5 Q. Were you in a marked patrol unit?  
6 A. Yes, we were.  
7 Q. All right. And was there videotape capabilities  
8 within that patrol unit?  
9 A. Yes.  
10 Q. All right. And were both Defendants transported  
11 together?  
12 A. Yes.  
13 Q. All right. Were you driving or were you the  
14 passenger?  
15 A. I was the passenger.  
16 Q. Can you tell the members of the Jury where  
17 Mr. Soliz was seated in connection with where you were  
18 seated.  
19 A. Okay. I was in the front passenger seat of the  
20 vehicle. Mr. Soliz was directly behind me in the  
21 passenger seat.  
22 Q. Okay. And was the other deputy driving?  
23 A. Yes.  
24 Q. And was Mr. Ramos seated behind him?  
25 A. Correct.

1 this transport?  
2 A. I have.  
3 Q. And have you reviewed a transcript of the  
4 videotape of this transport?  
5 A. Yes, I have.  
6 Q. And I want to talk to you specifically about some  
7 comments that Mr. Soliz makes. Is that okay?  
8 A. Yes.  
9 Q. All right. Do you recall Mr. Soliz making some  
10 comments about a man pawning some straps?  
11 A. Yes.  
12 Q. What is "straps" slang for?  
13 A. Guns.  
14 Q. So he's talking about a boy pawning some guns; is  
15 that right?  
16 A. Yes.  
17 Q. All right. And that they were going to get him  
18 on capital murder too; is that right?  
19 A. That's right.  
20 Q. And did he tell Mr. Ramos, "All we've got to do  
21 is play dumb, play dumb till the end"?  
22 A. Yes.  
23 Q. At the end of the videotape -- and about how long  
24 is the drive from Tarrant County to Johnson County?  
25 A. 20 miles.

1 Q. Okay. How fast do you drive? How long does it  
2 take to drive that drive?

3 A. I think it was probably 40 minutes, something  
4 like that.

5 Q. All right. So it's a pretty lengthy video?

6 A. Right.

7 Q. At the end of the video, do you recall Mr. Soliz  
8 indicating that Godley was a city?

9 A. Yes.

10 Q. And that he was familiar with Godley?

11 A. Correct.

12 Q. And that he was familiar with Keene?

13 A. Yes.

14 Q. And that he knew Johnson County?

15 A. Right.

16 MS. JACK: I'll pass this witness, Your  
17 Honor.

18 MR. HEISKELL: No questions, Judge.

19 THE COURT: May the witness be excused?

20 MS. JACK: Yes, Your Honor.

21 THE COURT: Thank you. You may be excused.

22 (Witness excused.)

23 THE COURT: This would be appropriate place  
24 to break until -- recess until tomorrow morning. So if  
25 you'll remember all the instructions I've given you and

1 I keep repeating to you at the end of each day, not to  
2 watch TV, not to read newspapers, not to get on the  
3 Internet, I'll allow you to go home again this evening.  
4 And we'll see you bright and early in the morning. Thank  
5 you. Be in recess until 8:45.

6 (Court adjourned.)

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1 THE STATE OF TEXAS )

2 COUNTY OF JOHNSON )

3 I, Pamela K. Waits, Official Court Reporter  
4 in and for the 413th District Court of Johnson County,  
5 State of Texas, do hereby certify that the above and  
6 foregoing contains a true and correct transcription of all  
7 portions of evidence and other proceedings requested in  
8 writing by counsel for the parties to be included in the  
9 volume of the Reporter's Record, in the above-styled and  
10 numbered cause, all of which occurred in open court or in  
11 chambers and were reported by me.

12 I further certify that this Reporter's Record  
13 of the proceedings truly and correctly reflects the  
14 exhibits, if any, admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 31 day  
16 of December, 2012.

17   
18

19 Pamela K. Waits, Texas CSR #4991  
20 Expiration Date: 12/31/13  
21 Official Court Reporter  
22 413th Judicial District  
23 Johnson County, Texas  
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25 Cleburne, Texas 76033  
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